

UNITED STATES DEPARTMENT OF JUSTICE  
UNITED STATES DEPARTMENT OF AGRICULTURE

Public Workshops Exploring Competition  
Issues in Agriculture

A Dialogue on Competition Issues Facing  
Farmers in Today's Agricultural Marketplace

Des Moines Area Community College  
FFA Enrichment Center  
Ankeny, Iowa

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9:30 a.m.

Reported by: SueAnn Jones, CSR, RPR

1 P R O C E E D I N G S

2 SECRETARY TOM VILSACK: Well, I want  
3 to first of all welcome all to this meeting and  
4 workshop this morning. I want to thank Rob Denson  
5 and the folks at DMACC for giving us this  
6 tremendous facility to operate in, and Rob, it's  
7 good to see you, and thanks for all that DMACC is  
8 doing for the young people who are in the community  
9 college.

10 I want to thank all who are here  
11 today. It's a great turnout. I also want to thank  
12 the over 15,000 people who have already commented  
13 as a result of the announcement of these workshops.  
14 We will have a total of five workshops throughout  
15 the country.

16 May 21 we will be meeting in Normal,  
17 Alabama, to talk about poultry. On June 7 we'll be  
18 in Madison, Wisconsin, to talk about the dairy  
19 industry. On August 26 we'll be in Ft. Collins,  
20 Colorado, to talk about livestock, and December 8  
21 we will be in Washington, D.C. to talk about  
22 margins.

23 We are certainly pleased and  
24 appreciative of the fact that Senator Grassley and  
25 Congressman Boswell, Lieutenant Governor Judge,

1 Secretary Northey are here and Attorney General  
2 Miller for their time, but we are very, very  
3 appreciative of the fact that the attorney general  
4 of the United States is here, and I'll have more to  
5 say about him in a few minutes.

6 And I also want to welcome Christine  
7 Varney who is an assistant attorney general for the  
8 antitrust division.

9 Let me start off by saying how deeply  
10 concerned I am about rural America. When I was  
11 born in 1950, 15 percent of the population of this  
12 country were in the farming business, and today  
13 less than 1 percent of our population is in the  
14 farming business.

15 Our farmers in this country are the  
16 most productive in the world. In 1950 a single  
17 farmer would be responsible for feeding 20 people.  
18 Today that number is a single farmer is responsible  
19 for feeding 150 people. These are the individuals  
20 who are responsible for our food, our water, an  
21 ever increasing amount of energy, an export  
22 surplus, and one out of every twelve jobs in  
23 America.

24 Despite that extraordinary  
25 productivity, only 11 percent of family farm income

1 comes from farming operations. We have seen a  
2 significant reduction in the number of farmers in  
3 the middle. Our last ag census indicated 108,000  
4 new farming operations in the category of less than  
5 \$10,000 in sales, an increase in the number of  
6 farms with over \$500,000 in sales of about 40,000,  
7 but a loss of 80,000 farms in the middle in the  
8 last five years.

9                   And when we lose farms in the middle,  
10 it also impacts directly the entire rural economy.  
11 Today's rural America has a higher poverty rate  
12 than the rest of the country, a higher unemployment  
13 rate than the rest of the country, significantly  
14 less per capita income than the rest of the  
15 country, an aging population, a workforce that is  
16 less educated, and well over 50 percent of our  
17 rural counties have lost population since the last  
18 census.

19                   The president has instructed the  
20 Department of Agriculture to establish a framework  
21 for a new rural economy, and we're making  
22 investments in broadband, in new energy  
23 opportunities, creating new markets here and  
24 abroad, developing ecosystem markets, and expanding  
25 conservation and forest restoration, all designed

1 to provide us additional income for our farm  
2 families.

3 But it's obvious that more needs to be  
4 done, and that's what brings us here today. I  
5 think we have to recognize that great efficiencies  
6 have led to consolidation. They've also resulted  
7 in less expensive food for consumers in this  
8 country. So the central question is, are farmers  
9 and ranchers in this country currently getting a  
10 fair shake? Is the marketplace providing a fair  
11 deal to all who are in the farming and ranching  
12 business? Is there sufficient transparency in the  
13 process?

14 We know that seed companies control in  
15 some cases the lion's share of certain commodities.  
16 Does that help or does that hinder farmers and  
17 ranchers? We know that the top four cattle packers  
18 control roughly 80 percent of procurement. The  
19 spot market in cattle was 68 percent in 1999.  
20 Today it's roughly 52 percent.

21 We know the top four hog packers  
22 control 65 percent of procurement. Today's spot  
23 market is only 8 percent where just 15 years ago  
24 it was 62 percent. We know the top four retailers  
25 control 37 percent of the market, two times what it

1 was in 1992.

2 So the purpose of these workshops is  
3 to explore, to determine whether or not the system  
4 is fair. I would say that these are workshops that  
5 have been long overdue. I know that there have  
6 been many in this room who have expressed to me the  
7 need for this kind of conversation and discussion.  
8 Our hope is that they help us to inform and develop  
9 better policy.

10 As you know, the Department of  
11 Agriculture is responsible for the enforcement of  
12 the Packers and Stockyards Act. We recently have  
13 made improvements in poultry contracting. We're in  
14 the process of completing work on defining undue  
15 preferences and unfair practices pursuant to the  
16 farm bill. We're adding additional enforcement  
17 mechanisms within the Packers and Stockyards Act.

18 We're looking at new credit tools to  
19 ensure that poultry and pork producers are treated  
20 fairly. We've established a dairy advisory  
21 committee to look at dairy pricing, and we're  
22 preparing for the farm bill discussions of 2012.  
23 All of those actions can be informed by what we  
24 hear today and over the course of the next several  
25 meetings.

1                   I want to take this opportunity to  
2     introduce to my friends from Iowa my friend from  
3     Washington, D.C., the attorney general of the  
4     United States. I think it's fair to say that the  
5     attorney general is no stranger to Iowa, having  
6     spent a good deal of time campaigning on behalf of  
7     President Obama in this state. He is a key  
8     confidant of the president's. He is and has been a  
9     U.S. attorney, a superior court judge, a deputy  
10    attorney general, and now the attorney general of  
11    the United States.

12                  It's my honor and privilege to welcome  
13    you, General, to my great state and to the people  
14    who are obviously very interested in what we're  
15    going to do here today. Ladies and gentlemen, the  
16    attorney general of the United States.

17                  ATTORNEY GENERAL ERIC HOLDER: Thank  
18    you very much, Secretary Vilsack. It's good to be  
19    with you, and it's great to be back in this  
20    beautiful state, your beautiful home state.

21                  As the secretary indicated, I had a  
22    chance to spend quite a time -- quite a good deal  
23    of time here during the president's campaign, and I  
24    think that's when the people of this great state  
25    taught me and proved to me and proved to our entire

1 nation that no matter how improbable the goal or  
2 how difficult the task, there's simply no better  
3 place to begin than right here in Iowa.

4 I have to tell you that when I was  
5 here during the campaign, I was drawing crowds as  
6 large as three. Things have changed a little bit.  
7 But today I've returned for what I know will be  
8 another learning opportunity, and I really want to  
9 stress that, a learning opportunity.

10 As I stand here, as I sit here, I'm  
11 reminded of President Eisenhower's observation -- I  
12 think this is a great quote. Farming looks mighty  
13 easy when your plow is a pencil and you're a  
14 thousand miles away from the cornfield. Dwight  
15 Eisenhower, great words. Those words, I think,  
16 remain true today.

17 And in the decades since he spoke  
18 them, the challenges that face farmers and other  
19 leaders across our agriculture industry have become  
20 even more difficult. And that's why we have  
21 gathered here for this historic discussion, and it  
22 really is historic. I'm glad to see that so many  
23 of you are here, and I want to thank the people of  
24 Ankeny for hosting this milestone event.

25 Now, I don't use the word milestone



1     lightly. I mean I really don't. It's been more  
2     than a century since the Sherman Antitrust Act  
3     became law and nearly 90 years since the Packers  
4     and Stockyard Act entered the books. In that time,  
5     not once -- not once -- have our nation's  
6     Departments of Justice and Agriculture come  
7     together for a public discussion on competition and  
8     regulatory issues in your industry.

9                 Not once have farmers, ranchers,  
10    processors, consumer groups, economists, and  
11    antitrust attorneys joined to share their  
12    perspectives on issues of competition and  
13    regulation, issues that you all understand best.  
14    But today in this room, that is exactly what is  
15    happening and what is going to happen. And it's  
16    what will happen in similar rooms across the  
17    country in the coming months, as the secretary  
18    indicated.

19                These workshops, I think, are an  
20    opportunity for all of us. And I believe they will  
21    provide each of us with a more complete  
22    understanding of an industry that has been at the  
23    core of the American economy ever since there was  
24    an American economy. The workshops, I think, also  
25    reflect the Justice Department's renewed commitment

1 to collaboration, to transparency, and to results.

2 Now, while our top protection -- our  
3 top priority must remain the protection of our  
4 national security, we cannot and we will not  
5 neglect our responsibility to safeguard and to  
6 strengthen the American economy. If we fail to  
7 defend America's position in the global  
8 marketplace, if we neglect our need to fight for  
9 prosperity, growth, and opportunity of return, we  
10 risk in a different way the security of our country  
11 and the safety of our people. We recognize this,  
12 and that, quite simply, is not an option.

13 Now, we all know that one of the  
14 greatest threats to our economy is the erosion of  
15 free competition in our markets. We have a great  
16 assistant attorney general, a person who runs the  
17 antitrust division in the United States Department  
18 of Justice sitting to my right, Christine Varney.  
19 She's as tough as they come. She's as aggressive  
20 as they come. She's as knowledgeable as they come.  
21 She has done a great job so far, and I think we can  
22 expect even greater things from her. The president  
23 chose well in making her the assistant attorney  
24 general.

25 We've learned the hard way that

1 recessions and long periods of reckless  
2 deregulation can foster practices that are  
3 anticompetitive and even illegal. So we have to  
4 ask, is today's agriculture industry suffering from  
5 a lack of free and fair competition in the  
6 marketplace? That's the central question.

7                   And to answer this question, we must  
8 begin by examining what we know for sure. We know  
9 that a growing number of American farmers find it  
10 increasingly difficult to survive by doing what  
11 they have been doing for decades, and we've learned  
12 that some of them believe that the competitive  
13 environment may be, at least in part, to blame.

14                   The Justice Department as well as the  
15 USDA and this entire administration is committed to  
16 protecting competition very, very vigorously. But  
17 I also recognize that the enforcement of the  
18 antitrust laws, while critical, does not really  
19 fully address the concerns of many agricultural  
20 industry leaders and stakeholders. That's why  
21 we're partnering with the USDA to benefit from its  
22 deep expertise in your industry and hopefully to  
23 share ours on the order of regulatory issues that  
24 are potentially at play.

25                   That's also why we're engaging

1 directly with all of you, to listen, to learn, and  
2 to determine the best ways to ensure fairness and  
3 encourage success. Now, as we evaluate and as we  
4 develop policy, we want to hear from you. In fact,  
5 when we announced these workshops late last year,  
6 we also listed -- or also issued a call for your  
7 comments and for your recommendations, and so far  
8 the response has really been tremendous. To date,  
9 we've received more than 15,000 comments, and I'm  
10 grateful that so many of you have contributed to  
11 this extraordinary example of government, public  
12 engagement, at its best.

13 Not only must we keep up this work, we  
14 must expand this work. Together I believe we can  
15 address the 21st century challenges in the  
16 agriculture industry and challenges that you face.  
17 Now, I'm certain that we can honor and preserve  
18 your industry's essential role in our economy as  
19 well as our culture, our livelihood, and our global  
20 standing. Those are the goals that we have.

21 Your participation here gives me great  
22 hope that we can accomplish together a great deal  
23 for the days and months ahead. Secretary Vilsack  
24 and I look forward to hearing from you and to  
25 working with you. Thank you very much.

1                   SECRETARY TOM VILSACK: So the process  
2 for the next 50 minutes of this first session is an  
3 opportunity for the panel who is assembled here to  
4 comment, and the way we're going to essentially  
5 approach this is we'll start with the attorney  
6 general and a few comments specifically, and then  
7 I'm going to turn it to Senator Grassley and just  
8 work down through the list asking each of the panel  
9 members at least one question. Hopefully we'll get  
10 through the first round.

11                   When I appear before the Senate,  
12 Senator Grassley has a little red light that tells  
13 me that I've got to stop after a couple minutes. I  
14 can't go on and on. So Senator, this is my time to  
15 put the red light on you. So I'm going to take  
16 advantage of that, although I'll probably pay for  
17 it later.

18                   So let me start the process with the  
19 attorney general, and again, thank you for being  
20 here today. And I guess the first question  
21 obviously is, as we begin this process and you look  
22 at the priorities that your department has as it  
23 relates to agriculture competition, maybe you could  
24 give us a sense of what those priorities are  
25 specifically and how we're going to move forward.

1                   ATTORNEY GENERAL ERIC HOLDER:   Sure.  
2   Just before I begin, just as a point of accuracy,  
3   the person who's most likely to pay for this is me.  
4   Senator Grassley is one of the more active members  
5   of the senate judiciary committee. I'll be  
6   appearing before him in about ten days or so. So  
7   I'm going to be extraordinarily nice to him over  
8   the course of the next hour or so. Remember that,  
9   Senator. All right?

10                   But the question that Secretary  
11   Vilsack asked is a serious one, and one of our  
12   first priorities was simply to work cooperatively  
13   with the United States Department of Agriculture on  
14   this series of agricultural workshops.

15                   We want to express our commitment to  
16   enforcing the antitrust laws in the agricultural  
17   sector, and we wanted to work with and take  
18   advantage of the deep expertise that exists within  
19   USDA. We want to learn more about agricultural  
20   markets and the agricultural sector generally.

21                   In order to do our work well, that is  
22   to be good antitrust lawyers and other lawyers in  
23   the Department of Justice who might be involved in  
24   this work, we have to understand the nature of the  
25   industry that we are going to engage in. And who

1 better to learn from than the United States  
2 Department of Agriculture?

3 We also hope to learn from other  
4 government officials and I think most importantly  
5 from farmers and others who are working firsthand  
6 in agricultural markets. There are things that you  
7 all know on a day-to-day basis that you live that  
8 we need to hear, that we need to understand if  
9 we're going to do our jobs as effectively as we  
10 can.

11 I think we come here as friends. We  
12 come here as government officials who are not  
13 afraid to hear from you, whatever is on your minds.  
14 For this dialogue to make sense, for this dialogue  
15 to really work, you have to be as frank as you can  
16 be, understanding that we are going to be receptive  
17 to that kind of interaction, to that kind of  
18 dialogue.

19 My primary goal is to protect both  
20 farmers and consumers from anticompetitive  
21 activity. Antitrust enforcement provides increased  
22 opportunities for farmers when it is done right.  
23 And this woman will do it right. I promise you  
24 that.

25 And we can also bring lower prices,

1 better quality, and greater choice for consumers.

2 There's not necessarily a tension between that,

3 between those two goals.

4           Maybe I can just mention a couple of  
5 the department's recent enforcement actions in the  
6 agricultural sector to give you a sense of what it  
7 is that we are here doing. In January we filed a  
8 lawsuit that challenged Dean Foods' acquisition of  
9 two dairy processing plants from Foremost Farms  
10 that inflicted higher milk prices on consumers.

11           In late 2008 we filed a lawsuit to  
12 block JBS S.A.'s acquisition of National Beef  
13 Company -- National Beef Packing Company. We  
14 concluded that the acquisition would lessen  
15 competition among packers for the purchase of feed  
16 cattle and thereby harm farmers who would get less  
17 for their cattle. This was going to be felt by  
18 consumers and bad for farmers as well.

19           Now, another major goal we have is to  
20 enhance competition by working cooperatively with  
21 other agencies. It's not only the Department of  
22 Agriculture and the Department of Justice that are  
23 engaged in this endeavor. We look at CFTC, the  
24 FTC, and we also have a great cooperation with our  
25 state counterparts. Tom Miller is such an



1 important person in this effort.

2 We're working closely -- I really want  
3 to emphasize -- with the Department of Agriculture,  
4 with my good partner, Secretary Vilsack. We are  
5 working on regulatory initiatives and ongoing  
6 litigation to ensure that USDA's efforts to protect  
7 farmers are successful.

8 We want to be good partners with USDA,  
9 but we also want to be good partners with all of  
10 you. We draw on the knowledge that USDA has in the  
11 agricultural markets so that we can do our jobs and  
12 do our enforcement, do our advocacy better, but we  
13 will enhance our ability to do the job that you  
14 expect of your Justice Department if, as I said, we  
15 have a very meaningful, frank exchange of views,  
16 ideas, thoughts, and concerns this morning.

17 I'm very glad to be here, and I look  
18 forward to interacting with all of you.

19 SECRETARY TOM VILSACK: Senator  
20 Grassley, I don't think I have to necessarily  
21 introduce you to this audience, but it is important  
22 for folks to know your long-standing service to  
23 this country beginning in 1958, your service in the  
24 Iowa legislature to '74, and then you were elected  
25 to Congress in 1974 and then in 1980 elected to the

1 Senate where you serve as the ranking member on the  
2 senate finance committee, on judiciary budget,  
3 agriculture, and joint tax committees, a farmer,  
4 someone who visits all 99 counties.

5 And I think the question is, Senator,  
6 as you listen to Iowa farmers, as you travel around  
7 the state, let us know what your thoughts are about  
8 how competitive this market is and what concerns,  
9 if any, you have.

10 SENATOR CHARLES GRASSLEY: I'm  
11 prepared to do it. And I would ask for a point of  
12 personal privilege before my five minutes because I  
13 think it's very important that people understand a  
14 process as much as substance because I've been in  
15 Congress a long time, but I've not seen this sort  
16 of cooperation between the U.S. Department of  
17 Agriculture and the Justice Department, and I've  
18 saw it as badly needed in the past, so I think I  
19 want to compliment you, Secretary Vilsack, and you,  
20 General Holder, and your Assistant Attorney General  
21 Varney for doing this.

22 It's badly needed, and the cooperation  
23 continued is very important as well, so I thank you  
24 for doing it. It fills a big void as far as I'm  
25 concerned in the issue of concentration and lack of

1 competition within agriculture. And now can my  
2 five minutes start?

3 SECRETARY TOM VILSACK: Absolutely.  
4 Just remember that when I'm testifying.

5 SENATOR CHARLES GRASSLEY: Okay.  
6 Well, it's obvious to me because I've talked about  
7 it so long, so Iowans would not be surprised if I  
8 said that there's not enough competition, too much  
9 concentration, and I see it not only as a problem  
10 for today but as a problem for young farmers  
11 getting started, getting into agriculture, keeping  
12 the next generation of family farmers strong, and I  
13 say all of this in the enhancement of the  
14 institution of the family farm.

15 We use the term family farm often  
16 loosely, but I consider it a very important  
17 institution that's a basic of American agriculture  
18 and that that needs to be preserved. Bigger isn't  
19 per se bad, but it can lead to predatory business  
20 practices and behavior. And that's what we've got  
21 to be concerned about and the legitimacy of  
22 government not being a partner but for sure being a  
23 referee.

24 More specifically, packer ownership of  
25 livestock is a problem, and I've been working on

1     that a long time, but when you're up against the  
2     American Meat Institute and a lot of the other  
3     strong people in Washington, D.C., it's difficult  
4     to get around that, so we haven't made much  
5     progress in that area.

6                 Secretary Vilsack already spoke about  
7     the statistics on the diminishing of the spot  
8     market. We need to take legislative action and/or  
9     regulatory action to do that. We should not have  
10    very much, if any, mandatory arbitration. There  
11    ought to be alternatives.

12                I think we have to have -- what goes  
13    on here at this meeting between the U.S. Department  
14    of Agriculture and the Department of Justice ought  
15    to be formalized in some way, and so I bring to  
16    your attention my Agricultural Competitive  
17    Enhancement Act, ACE for short. Our bill would  
18    formalize this sort of dialogue because U.S.  
19    Department of Agriculture being involved with the  
20    Department of Justice -- and I don't say this to  
21    denigrate anything that the Justice Department  
22    today is doing, but I think I can say under both  
23    Republican and Democratic presidents in the past  
24    that there has not been enough dialogue like you  
25    see today.

1                   And I hope that it leads to what I  
2    would call competition guidelines. I think these  
3    must be issued by the Department of Justice as it  
4    applies strictly to agriculture. And the ACE  
5    legislation would beef up antitrust enforcement.

6                   In the process of what you're doing,  
7    and we won't know down the road for several months  
8    until you get your hearings done, but I don't want  
9    anything to be done that stifles innovation, and I  
10   want to promote not only for agricultural  
11   competition, but this also applies to what we need  
12   to be doing through regulatory reform on Capitol  
13   Hill in regard to Wall Street and our financial  
14   institutions.

15                  We need more transparency. We need  
16   more openness in the market, and with transparency,  
17   I think you get accountability, and you get a lot  
18   more self-regulation and consequently then less  
19   requirement for people in USDA with Packers and  
20   Stockyard or with the Justice Department, what they  
21   have to do through enforcement of law. Thank you  
22   very much.

23                  SECRETARY TOM VILSACK: Thanks,  
24   Senator. Senator is reserving his time.

25                  I want to turn the podium now and the

1 direction to Congressman Boswell, also someone who  
2 has served our country in the military with  
3 distinction, first elected to the U.S. House of  
4 Representatives in 1996. Prior to that he was the  
5 president of the Iowa Senate where I served with  
6 him, had the pleasure and privilege of doing so.

7 He's been named the chair of the  
8 agricultural subcommittee on general farm  
9 commodities and risk management focused on crop  
10 insurance. He previously served as chair of the  
11 agricultural subcommittee on livestock, dairy, and  
12 poultry. He knows quite a bit about farming. He's  
13 traveled throughout this state and throughout the  
14 country.

15 Congressman, let me basically direct  
16 the same kind of question as I did to the senator.  
17 Your thoughts and attitudes about the competitive  
18 circumstances that farmers have today and how fair  
19 and balanced the process is.

20 REPRESENTATIVE LEONARD BOSWELL: Well,  
21 thank you, Mr. Secretary, and I'd like to have my  
22 personal point too, follow the senator, you know.  
23 We've got to work together, so hope you think about  
24 that. Equal rights. Yeah. Thank you, Attorney.

25 First off, I talked to the attorney

1     general from Missouri a little while ago, and he  
2     said something about the fact that he was here, and  
3     we chatted a minute. And I said, well, I started  
4     there in Missouri, just barely, south of Lamoni or  
5     Davis City, Decatur County, on the first ridge into  
6     Missouri. I was born in a farmhouse which stood  
7     until just last year. But anyway, I do have a few  
8     roots, if you will.

9                     But move on from that, I've known  
10    Secretary Vilsack as counselor, as senator, as  
11    governor, and candidate, if you will, and as  
12    secretary. I have to applaud the effort he's put  
13    forth in every category that I've known him in for  
14    all those years, and I just want to say that.

15                    And General Holder, we've not had this  
16    personal contact I've had with Secretary Vilsack,  
17    but I've followed you for a long time. Thank you  
18    for stepping up to the plate and doing what you do.  
19    I appreciate it very much. We all do.

20                    Back to the situation here, it's very  
21    challenging. We know that. It's a challenging  
22    time. It's a historical time. And I look around  
23    the audience, which I have for a few moments, and  
24    recognize a lot of faces, people I have engaged in  
25    conversation with over the production of

1     agriculture and how we feed this hungry world  
2     that's growing by 90 million, they tell me, every  
3     year. This is a big factor. It's a big thing.

4                 I personally think there's room for  
5     all the different avenues of production in  
6     agriculture to participate, and we're still going  
7     to have to really scramble in our research and all  
8     the things we got to do to be able to do that, and  
9     I think we can. I believe we can do that. I'm the  
10    eternal optimist because I come from the farm, and  
11    I believe that. And I think we can.

12                And so what you're doing here today as  
13    holding this together, to sit down and to listen to  
14    each other and to talk about it and work it out,  
15    and I'm very proud to look out here and see these  
16    yellow shirts, the Commercial Food Workers. Yeah.  
17    We can grow it. We can produce it. We can go  
18    through all this, but somebody has to, you know,  
19    take it through the processing and the packaging  
20    and put it out there on the shelf, and these are  
21    the men and women that do that, and we ought to be  
22    very appreciative of the efforts that they do.

23                And look out here at President Denson  
24    and realize what this fine institution does for us  
25    and many things to do with agriculture and



1 opportunity and the FFA. I talked to one of those  
2 young lads a little while ago. I said "I had a  
3 jacket like that. I don't know where it's at right  
4 now but probably wouldn't fit me anyway."

5 But you know, there's so much  
6 opportunity, but there's a big, big challenge, and  
7 we've just got to have the dialogue and be willing  
8 to talk together, and we can do this. We can.

9 And so, Mr. Secretary, there's a need.  
10 I concur with many of the things that have been  
11 said already with my colleague Senator Grassley.  
12 I've talked to Chairman Peterson of the full ag  
13 committee from Minnesota. He understands what goes  
14 on out here as well as you do.

15 And we're going to start the hearings  
16 next month, the field hearings, on the next farm  
17 bill, and we're still adjusting to the current one,  
18 as you well know, but you know, we did some things  
19 in the last farm bill that a lot of you, I think,  
20 are interested in. Senator Grassley mentioned, you  
21 know, the mandatory arbitration and the dealing  
22 with contracts and different things, to get  
23 daylight on it, to get it out there where people  
24 can see what's going on and have fairness and  
25 opportunities for the producers, you know, to deal

1 with this contract agent or whoever and have  
2 fairness.

3 And I think we keep that in mind that  
4 fairness and transparency, that we can do these  
5 things, and I am so pleased that, you know, we've  
6 got two major research companies that work very  
7 hard to try to be able to get us the opportunity to  
8 increase production and meet this hunger that's  
9 around this world, and it's going to grow. We got  
10 to have fairness and openness, and we can do this.

11 So I'm hearing out there from the  
12 farmers that I have a lot of contact with and many  
13 others that stay on focus and make sure that we can  
14 do this to the best we possibly can do it, whether  
15 it's the education process, the research process,  
16 the working together, on the fairness, the  
17 openness, and so on so this country of ours can  
18 continue to lead in this world the food production  
19 and doing the things we have been known for doing  
20 for a long, long time.

21 We can still do it, but we've got a  
22 big challenge right now, and you know it, and I  
23 could spend another five minutes talking about  
24 that, but I want to go back. I want to hear -- I'm  
25 here to listen today. I want to learn. I want to

1 go back to my committee. I want to go back to my  
2 chairman, and I want us to sit down and deal with  
3 the Senate and the House and those of you that meet  
4 all the different aspects of this and do the very  
5 best we can possibly do, and I think that's a good  
6 thing.

7 Thank you very much. I'm glad to be  
8 here.

9 SECRETARY TOM VILSACK: I first met  
10 Lieutenant Governor Judge in her capacity as a  
11 mediator during the farm crisis of the '80s when I  
12 was representing farmers who were being foreclosed  
13 on, and she was trying to keep farmers on the farm.

14 We then served together in the Iowa  
15 Senate for a period of time. She was then elected  
16 as the first woman secretary of agriculture for  
17 this great state. Then in 2006 she was elected as  
18 our lieutenant governor.

19 So in addition to having all those  
20 elected offices and providing service as the  
21 mediator, she also, along with her husband, Senator  
22 Judge, have been in the farming business, so she  
23 knows a good deal about agriculture.

24 So Governor, let me ask you this  
25 question. As you deal with issues starting in 1980

1 all the way through the process, talk to me a  
2 little bit about the smaller producers and the  
3 challenges that you see smaller producers might  
4 have in this competition situation.

5                   LIEUTENANT GOVERNOR PATTY JUDGE:

6 Thank you very much, Secretary. I'm not going  
7 to -- since I'm not in Congress or the U.S. Senate,  
8 I don't know that I have to have such tight rules  
9 about my time. I'm a farmer from southern Iowa,  
10 and we talk pretty slow.

11                   I did have a couple of great  
12 colleagues with the time I spent in the Iowa  
13 Senate, and two of them are here with me today,  
14 Congressman Boswell and Secretary Vilsack, great  
15 friends, and it's good to see them again, and also  
16 to General Holder, it's good to have you back in  
17 Iowa. How many times? We like to have you here.

18                   I'm going to use the time to address  
19 the question that the secretary asked me in two  
20 specific areas because I believe that they are  
21 areas that need to be addressed, must be addressed  
22 if independent farmers are to have any opportunity  
23 for success in the future, and those two areas are  
24 first of all mandatory price reporting, and the  
25 second area is the availability of both short- and

1 long-term financing for independent farmers.

2           Five years ago when I was in Secretary  
3 Northey's seat, Iowa made a great push to make some  
4 significant changes in the federal mandatory  
5 pricing laws. The changes that we were seeking  
6 were to bring fairness and transparency to the  
7 marketplace, to give independent producers valuable  
8 information that they have to have in order to make  
9 marketing decisions. Unfortunately, at that time  
10 we were only able to make four modest changes that  
11 were incorporated into the new law, and I want to  
12 state that Iowa Pork Producers and Iowa Cattlemen's  
13 Association both worked very hard with many of us  
14 to make more significant changes than we were able  
15 to accomplish.

16           The changes that were accomplished  
17 five years ago were the addition of a schedule for  
18 net price distribution, expanded sow and boar price  
19 reporting, and requirements that USDA ensure  
20 producers' confidentiality when they make an  
21 inquiry about packer reporting.

22           Having said that, if independent  
23 producers are to have the transparency and access  
24 to markets, we know that mandatory price reporting  
25 law needs to include the addition of reporting of

1     wholesale pork products just as it is done with  
2     boxed beef and boxed lamb today. In addition, the  
3     law should require greater scrutiny and disclosure  
4     of potential formula prices that may be being used  
5     to avoid reporting negotiating prices.

6                     It is my understanding that USDA  
7     recently began a quarterly compliance report, and  
8     that report is to include at a minimum the total  
9     number of audits that have been conducted, the  
10    total number of violations that have been found,  
11    examples and descriptions of violations and the  
12    number of packers required to report under law by  
13    species, and notation of any unresolved violations  
14    or pending violations.

15                    Now, it is very important that that  
16    report is accurate, and it's very important that  
17    that report is readily accessible to livestock  
18    producers. It's also my understanding that in the  
19    ten-year life of the present reporting law, not one  
20    firm as of yet has been fined for a violation.  
21    With closer scrutiny and more timely reporting,  
22    violations must be identified and fines imposed as  
23    was intended.

24                    Mandatory price reporting is a  
25    critical part for an independent producer today

1 just as it was five years ago, and the next  
2 livestock reporting law that's passed and  
3 implemented by USDA should begin immediately for  
4 greater independence and authority to your audit  
5 and compliance branch from the market use and  
6 livestock and seed branch because there is a  
7 feeling that that is perhaps too heavily influenced  
8 by industry groups.

9               Finally, closer scrutiny of the  
10 formula -- and I think Senator Grassley made  
11 reference to this -- of the formula and forward  
12 contracts in sales is needed to ensure that firms  
13 are not skirting the reporting of their negotiated  
14 sales.

15               The second issue that I'd like to  
16 mention briefly is availability of financing for  
17 independent or small family farmers. With the  
18 tightening of credit requirements and consolidation  
19 of banks, which results in the loss of locally  
20 owned and community-invested banks, and changes  
21 also in the Farm Service Administration lending  
22 policies that all of those things have happened  
23 over a period of years since the farm crisis, and  
24 that sets up for us really a perfect storm that  
25 allows large vertical integrators to step into a

1 void, and they literally then assume the role of  
2 banker to family farmers across this country.

3 The integrator today is supplying  
4 feed, livestock, and in many cases loans for  
5 construction of facilities for family farmers. And  
6 the farmers are, in fact, today supplying skilled  
7 labor.

8 Although many find this system to be  
9 objectionable and believe that vertical integration  
10 is, in fact, a leading cause of our concentration  
11 problems, few farmers have the financial capacity  
12 to farm on their own and find themselves in a  
13 catch-22 situation. This situation will not change  
14 without a change in thinking on a national level  
15 regarding agricultural financing today.

16 And I would suggest respectfully a  
17 review by USDA regarding your lending programs,  
18 both your direct and indirect loan programs, to see  
19 if there isn't some way that we can help bring some  
20 more stable financing for independent producers.  
21 And thank you very much.

22 SECRETARY TOM VILSACK: Thank you. I  
23 do want to say in response to the last comment that  
24 we actually have engaged in a recent review of the  
25 credit policies, and we have made some changes as



1 it relates to poultry and pork producers and the  
2 relationship that they have with integrators to  
3 make sure that we're not undercutting the smaller  
4 independent producers, making it more difficult for  
5 them to access.

6 In fact, we just in December issued  
7 rules on poultry and just recently applied those  
8 rules to pork, so we are cognizant of that, and  
9 we've also continued to focus on additional  
10 guaranty and direct loan opportunities in a more  
11 aggressive effort for family farmers.

12 Let me turn the attention now to  
13 Attorney General Miller, if I might. General,  
14 you've established a farm division in your office  
15 which I think has undertaken in many cases to  
16 represent farmers who have been engaged in and  
17 subject to certain circumstances that might  
18 constitute fraud or illegal activity, and what I'm  
19 interested in from your perspective and what you've  
20 seen from that farm division is what the most  
21 problematic aspect in marketing is relative to  
22 competition within this state from your  
23 perspective.

24 ATTORNEY GENERAL TOM MILLER: Thank  
25 you, Secretary Vilsack, and thank you to Secretary

1 Vilsack and Attorney General Holder for developing  
2 this relationship to deal with consolidation,  
3 concentration, and antitrust in the agriculture  
4 area. Like to all the other speakers, I think it's  
5 great in the public interest for a lot of reasons,  
6 but let me just mention one that's practical and  
7 that is important, and that is that the antitrust  
8 law is fairly limited. And the current judiciary  
9 interprets it even more limited than many of us,  
10 Chris and I and others, think should be the case.

11               So to combine antitrust and the  
12 authority of the USDA which includes unfair  
13 practices, and I think deceptive practices, is a  
14 very important combination and complement. It's a  
15 little bit like we do in the attorney general's  
16 office in Iowa that if we have a set of troublesome  
17 practices, we will look at the antitrust law, but  
18 if we can also develop a theory on the consumer  
19 protection law, we can have a much, much stronger  
20 case, so you know, what you guys are doing is just  
21 great.

22               And while this relationship is very  
23 important, Attorney General Holder mentioned  
24 another one that's very, very important in my view,  
25 and that is the relationship between the state

1 attorney generals and the Department of Justice and  
2 the other federal government, and let me tell you,  
3 this relationship today is the best that it's been  
4 in the history of the country. The relationship  
5 that we have with Chris Varney working in  
6 antitrust, we've never had that kind of  
7 relationship before.

8               We're working with many parts of the  
9 Justice Department in mortgage fraud, Lanny Breuer  
10 who's head of the criminal division; Tony West  
11 who's head of the civil division. We're developing  
12 a partnership to work on these cases and work  
13 together to protect the public as we should.  
14 People like Tom Corelli and David Ogden before he  
15 left, we worked with very closely.

16              I've been around -- still a relatively  
17 young man, but I've been around quite a while, and  
18 I've seen many administrations, Democrat and  
19 Republican, and we've never had this kind of  
20 relationship of cooperation, openness, trust, and  
21 respect as we have today, so General Holder, thank  
22 you very much for your working with the states in  
23 this really unique way but, more importantly, a way  
24 that's just so much in the public interest.

25              In terms of concentration and

1 competition in agriculture, we've had sort of a  
2 preoccupation, some would say an obsession, in our  
3 office in dealing with the contract producers and  
4 contract companies, particularly in pork but in  
5 seed as well. We've worked over a decade in this  
6 area. We started by developing a model contract in  
7 seed and livestock. Neil Harl was very important  
8 in that effort, and you'll hear from Neil, I think,  
9 this afternoon. I'm looking forward to his  
10 comments.

11 Then we developed a grower's or  
12 contractor's bill of rights that we went to the  
13 legislature with to establish certain rights. We  
14 got close to passing that but only got one part of  
15 it passed, and that was the priority, a lead  
16 priority for the contract growers, contract  
17 producers, in terms of the proceeds.

18 But we don't give up. We had some  
19 settlements with Smithfield and others, and we  
20 incorporated many of those bill of rights into  
21 those agreements, such things as the contracts have  
22 to be in plain language. You can't retaliate  
23 against a grower producer if he or she is a  
24 whistle-blower or engages in collective activity.

25 You can't terminate the contract over

1 a period of time if a significant investment has  
2 been made. The agreement with Smithfield provided  
3 that they had to buy 25 percent on the open market,  
4 so you know, we've worked in that area, and it's a  
5 very important area.

6 We were concerned initially that in  
7 long-term production it would be like chicken in  
8 other parts of the country. I don't think that's  
9 happened. There is a certain amount of rights and  
10 intent to deal with these kinds of issues because  
11 of our efforts and the efforts of many others, but  
12 we continue to think that that's an important  
13 relationship, one that has to have some balance and  
14 some respect and authority for the farmer.

15 With some of the other AGs, we've  
16 filed some comments. We were among those -- did  
17 you say 15,000 comments that have been made? We've  
18 joined those comments, and you'll hear from three  
19 of my colleagues this afternoon, including Attorney  
20 General Steve Bullock of Montana. He's the  
21 principal author of these comments that we joined  
22 in and worked with him, and he'll talk more about  
23 them, but it covers the range of issues dealing  
24 with concentration, of competition in agriculture,  
25 including seed, grain transportation, cattle, hogs,

1 chicken, and dairy. So Steve is here with Chris  
2 Koster who's the attorney general of Missouri. The  
3 attorney general of Ohio, Rich Cordray, will join  
4 him this afternoon. You'll hear more about our  
5 statement here from him and particularly Steve.

6 But finally, you know, I would mention  
7 competition in regard to seeds. This is an issue  
8 that's before the agriculture community and before  
9 all of us. It was a recent AP story that I thought  
10 was very comprehensive that indicated that in soy,  
11 in soybeans, Monsanto seeds, their wonderful trait  
12 that's Roundup Ready resistant, was in 95 percent  
13 of the seed in soybean; about 80 percent or maybe  
14 82 percent in corn.

15 Additionally, we've heard reports  
16 price increases in seed this year, initially as  
17 much as 40 percent. That didn't seem to bear out,  
18 but perhaps 25 to 30 percent has been the price  
19 increase, although a little more research has to be  
20 made there.

21 So Monsanto's place in seed is  
22 something that's a competitive issue that's before  
23 all of us and that we've acknowledged that we're  
24 working on. Monsanto has acknowledged that the  
25 Justice Department is working on it, so you know, I

1 certainly would mention to Secretary Vilsack and  
2 Attorney General Holder that issue.

3 And finally, you know, Tom, welcome  
4 back. We're proud that you're in this cabinet.  
5 We're proud that you're the ag secretary, and we're  
6 proud of the things that you do in that office.

7 SECRETARY TOM VILSACK: Thank you.  
8 It's hard to believe that Tom Miller was first  
9 elected as our attorney general in 1978, and I can  
10 tell you I travel around the country and visit with  
11 a lot of attorney generals and a lot of officials.  
12 Believe me when I say this. He is considered to be  
13 one of the foremost attorney generals in this  
14 country, so we are fortunate to have him serve us  
15 for as long as he has served us. General, thank  
16 you.

17 Someone who has also, I think,  
18 received a lot of attention nationally is our  
19 secretary of agriculture. I want to turn to him  
20 now. I think folks know that Secretary Northey is  
21 a fourth generation Iowa farmer, grows corn and  
22 soybeans in a farm near Spirit Lake. He started  
23 with his grandfather, Sid, after graduating from  
24 Iowa State.

25 I've had an opportunity to spend a

1 good deal of time with the secretary in Washington,  
2 D.C. on a variety of issues, and I think we have a  
3 very good and positive relationship.

4 And so Mr. Secretary, let me ask you,  
5 as you really focus on your day-to-day activities,  
6 I know that you're concerned about this issue of  
7 competition and consolidation and people getting a  
8 fair shake in the countryside. Your thoughts about  
9 the current competitive circumstance in Iowa and  
10 what you think we ought to be focused on.

11 SECRETARY BILL NORTHEY: Well, thank  
12 you. Thank you for having this hearing here. I  
13 appreciate it very much. Great to have a room full  
14 of Iowans and others here as well. It certainly is  
15 an important issue and something that needs to be  
16 talked about.

17 As I get around the state, talk to a  
18 lot of folks about what's going on in ag, and one  
19 thing consistent about agriculture is it changes.  
20 But certainly changes in the last ten years have  
21 been fairly dramatic. Iowa is still No. 1 in corn  
22 and soybean production. It's a very logical place  
23 to have these conversations, spend some time  
24 talking about those inputs and what the impact has  
25 been in the last few years on inputs and the impact



1 on producers.

2 One of those things that I hear from  
3 producers out there as a concern, as General Miller  
4 mentioned, was concerns about price increases in  
5 seeds. We've seen those price increases. In fact,  
6 about ten years ago, roughing out the numbers, we  
7 probably spent a little less than a billion dollars  
8 a year as Iowa farmers on seed. We plant about  
9 13 million acres of corn, 10 million acres of  
10 soybeans. That number is probably closer to  
11 \$2 billion a year right now.

12 Now, in that same time, we've actually  
13 seen a dramatic increase in the value of what we  
14 produce as well, prices and yields, and so we went  
15 from about 4 or \$6 billion a year, maybe \$7 billion  
16 a year, crop production valued in the state to now  
17 we sell about \$10 billion worth of crop. We  
18 probably produce about \$12 billion worth of crop,  
19 so we've nearly doubled the amount, in part because  
20 of prices, in part because of yields. Certainly  
21 that new technology has been a part of that.  
22 That's really helped.

23 The demand that we've had overseas and  
24 certainly in our ethanol plants have increased the  
25 value, and that has been part of the reason that

1 higher technologies that bring better yields have  
2 increased in value to the producer. If they're  
3 getting \$2 a bushel and you get 20 extra bushels by  
4 doing something, that's worth \$40 an acre. If  
5 you're getting \$5 a bushel for that corn, then  
6 that's worth \$100 to you, so splitting that  
7 difference or sharing that makes some sense.

8 Now, we've also seen the price of that  
9 drop, that crop drop a little bit. We haven't  
10 necessarily seen the price of those inputs drop,  
11 and I think that's the concern that I hear of  
12 producers out there.

13 There's always this tension certainly  
14 in not wanting to lose the encouragement of  
15 developing new technologies. Certainly corn and  
16 soybean producers have seen a lot of new  
17 technologies as we compare our industries to wheat  
18 and some of the other products out there that  
19 haven't been a way for investment to happen and get  
20 a return on investment in those other industries.

21 We do see benefits here. But as you  
22 compare and contrast, we kind of talk about three  
23 sets of inputs. We talk about as far as crop  
24 production, have a better seed. We talk about our  
25 weed control, our herbicides, and we talk about

1     fertilizer. They each have different  
2     personalities. Seed certainly has an increase in  
3     value, and we've seen that technology, and we're  
4     certainly increasing in price as well.

5                     Herbicide has been more flat. It  
6     actually has gotten some additional competition  
7     from seed, Roundup Ready and other kinds of things,  
8     and so that cost of controlling those weeds has  
9     been fairly flat and probably generated less  
10    investment in part because of that as time has gone  
11    on as well.

12                    And then you contrast that with  
13    fertilizer. We've seen some big movements in  
14    prices of fertilizer the last few years. Two years  
15    ago we had record high fertilizer prices.  
16    Certainly there's always this concern of how narrow  
17    is that production capacity to that fertilizer?  
18    Are there folks out there that can set prices? It  
19    sure felt like it at the time, two years ago, as we  
20    saw thousand dollar anhydrous ammonia and high  
21    costs of P&K as well.

22                    And yet fertilizer is very -- what we  
23    sometimes call fungible. It can move around, and  
24    there's an international market for it, and  
25    although it may not quickly come back down in

1 price, it certainly has come back down in price.

2 And so each of these have their own  
3 characteristics in how they act, and we've seen  
4 fertilizer have a competition that has brought that  
5 price down to some extent. There's still concerns  
6 both at the local level, how many folks do you have  
7 to buy the stuff from as well as the national or  
8 international level of how many producers are there  
9 out there? But we've certainly seen, because of an  
10 international impact, that prices have come back  
11 down again from the peak as well.

12 So there's a tension in all these  
13 areas. They each have their own personalities. I  
14 think we have to look at them each differently.  
15 They certainly impact producers, and for producers  
16 that 10 years ago, 15 years ago were producing 250  
17 or \$300 an acre and now are producing 700 or  
18 \$800 an acre, inherently there's some increases in  
19 cost there, but that doesn't necessarily answer the  
20 question of whether we have competition.

21 I guess one last point would be on the  
22 selling side. It's been an interesting time as  
23 we've added -- certainly during your tenure,  
24 Secretary, as governor, we've added ethanol plants.  
25 We've actually added market to the corn demand out

1     there.

2                   We've maybe reduced and consolidated  
3     some of the grain buyers that are out there.  Some  
4     of the co-ops have gone together, and so in some  
5     areas we see less, but by the same token we have  
6     39 ethanol plants in Iowa, and we produce more  
7     ethanol in this state than anybody else does.  
8     Those are new markets that didn't used to be there,  
9     and that competition has in some cases created a  
10    stronger market, a market that's closer to the  
11    Chicago price.  We talk about the difference  
12    between the local price and Chicago price as the  
13    basis.  That has tightened up as we've gotten more  
14    competition, so certainly competition works.

15                  But we have a lot of concerns in the  
16    livestock industry from folks, and that always  
17    balances tension between competition and  
18    efficiency, and that's one of the challenges that  
19    you all have is to listen to the folks as folks  
20    outline specifics in those areas.  So thank you for  
21    being here and the chance to say a few words.

22                  SECRETARY TOM VILSACK:  We have six  
23    minutes left, so this is the same question to all  
24    the panelists, and obviously, Christine, I'm going  
25    to give you a chance to close.  I'm going to give

1 the panelists an opportunity.

2 If there was one issue or one  
3 improvement that you would want us to focus on  
4 specifically as part of this conversation, what  
5 would it be? Senator?

6 SENATOR CHARLES GRASSLEY: I think to  
7 make sure that the arrangement that this meeting  
8 and your series of hearings exemplify that we  
9 formalize the arrangements between U.S. Department  
10 of Agriculture and the Department of Justice to  
11 work together, and from my standpoint, that means  
12 I've been critical of past Departments of Justice  
13 maybe not paying enough attention to agriculture,  
14 not enough institutional knowledge in agriculture  
15 to help that, and to formalize it some way so that  
16 when we have questions of the antitrust laws being  
17 enforced that there's input from the Department of  
18 Agriculture on that point.

19 And then even though it might not be a  
20 part of this discussion but more vigorous  
21 enforcement of the Packers and Stockyards Act.

22 SECRETARY TOM VILSACK: Congressman?

23 REPRESENTATIVE LEONARD BOSWELL: Well,  
24 let me concur with Senator Grassley. Market  
25 transparency. I just mentioned this. Very

1 important to be able to know what you're dealing  
2 with as you're trying to make the sale and so on  
3 and the market transparency. And it's quick. It's  
4 up to date.

5 And then as we go into this next farm  
6 bill, which will start right away, as I mentioned,  
7 that we take advantage of the input from everybody  
8 that's doing the hands-on, regardless of what part  
9 that you're playing in agriculture. For example,  
10 fruits and vegetables, before this last farm bill,  
11 they said "Leave us alone." But in this farm bill,  
12 they came to the table, which was their right to do  
13 so, and it was reasonable.

14 And so I'm concerned about what's  
15 happening to our base line in production of  
16 agriculture as we go in this next farm bill for  
17 what we had produced the last time and what we're  
18 looking that we may have to do now because of risk  
19 management and so on. I guess I've added two or  
20 three other things.

21 SECRETARY TOM VILSACK: Okay. Very  
22 good. Governor?

23 LIEUTENANT GOVERNOR PATTY JUDGE: I  
24 think it's been said. I hate to make this, you  
25 know, just keep being unanimous here, but market

1 transparency is critical as we go forward, and I  
2 would also say, as Senator Grassley said, that it  
3 is also critically important that the Packers and  
4 Stockyards Act is enforced and that cooperation  
5 between your agency and General Holder's agency  
6 will be critical in that.

7 SECRETARY TOM VILSACK: General?

8 ATTORNEY GENERAL TOM MILLER: Well,  
9 I'm a lawyer for better or for worse, so this is a  
10 little technical, but I'll try and make it as  
11 understandable as possible.

12 There's two parts of dealing with  
13 these concentration issues as we've discussed.  
14 There's the antitrust law, and there's the other  
15 provisions, including Packers and Stockyards, the  
16 unfair practices.

17 I think on that side, we need to --  
18 you need to and we need to work with you to more  
19 develop the nonantitrust laws to deal with  
20 concentration, and obviously you're talking about  
21 that, but there's more that can be done there, and  
22 that law can be explored.

23 On the antitrust side of it, it goes  
24 back to a breakfast meeting that we had with Chris  
25 Varney, the attorney general, Steve Bullock, Chris



1     Koster, and myself and probably 25 other AGs about  
2     antitrust law generally, that the interpretation of  
3     the antitrust law swings, and the '60s and '70s, it  
4     swung to a point where enforcement, it's very  
5     broad, and it swung back to a very narrow  
6     interpretation currently.

7                     And what we talked about is how we can  
8     bring cases and how we can do things to try and  
9     bring the antitrust law back more to the middle.  
10    The interpretation by the judiciary is a big  
11    challenge, but I think that's a very important part  
12    of any kind of antitrust enforcement that Chris and  
13    the attorney generals, and Jon Leibowitz, the chair  
14    of the Federal Trade Commission, was also an  
15    important layer here, we've talked about and  
16    hopefully we can work on.

17                    SECRETARY TOM VILSACK: Secretary?

18                    SECRETARY BILL NORTHEY: Let me just  
19    add one issue to the mix here, and I think most of  
20    these issues, we're looking back on. We're looking  
21    at what has happened, but we actually have an issue  
22    that's coming at us that we have a chance to kind  
23    of set the stage for, and that is some of these  
24    biotechnology traits will come off patent and the  
25    understanding of how to put those -- how we treat

1 those as they come off patent. It's fair to the  
2 companies, fair to the industry, and fair to  
3 producers.

4 I think we actually have an  
5 opportunity to be able to set the stage and the  
6 arrangements for that in a way that's proactive  
7 before that happens that could be very constructive  
8 to producers and companies decades into the future.

9 SECRETARY TOM VILSACK: Well, I'm  
10 going to finish this segment by asking the  
11 assistant attorney general, Christine Varney, to  
12 make a few comments in her role as she looks at  
13 antitrust laws, protecting farmers and smaller  
14 operators and consumers.

15 Christine, be interested in your  
16 thoughts about next steps.

17 ASSISTANT ATTORNEY GENERAL CHRISTINE  
18 VARNEY: Thank you very much, Secretary. If I can  
19 start by addressing what the panelists asked they  
20 would like to see, and I can absolutely commit on  
21 behalf of myself and my boss, the attorney general,  
22 Senator Grassley, that you will continue to see the  
23 unprecedented cooperation and collaboration between  
24 our office and the USDA.

25 As a matter of fact, I have hired

1 someone formerly from the state attorney general's  
2 office in Texas, Mark Tobey who's here today, who  
3 specializes in agriculture. I have a deputy  
4 assistant also here today, Phil Weiser, who  
5 specializes in agriculture. Bill Stallings who's  
6 the lead of our agriculture enforcement team, a  
7 long-time career lawyer, is here in the back. So  
8 you have our commitment to work with all the folks  
9 that are here from USDA in an unrelenting quest to  
10 find the right balance for farmers, producers,  
11 consumers across the whole agriculture chain.  
12 We're going to do that in this administration.

13 To Congressman Boswell, market  
14 transparency. We care deeply about transparency --  
15 and lieutenant governor. We understand that  
16 transparency helps maintain a competitive  
17 marketplace. So you can be sure that we're going  
18 to be working closely with USDA to figure out where  
19 our law, our jurisdiction, and their law and their  
20 jurisdiction overlap so that we can get as much  
21 transparency as is possible into the system.

22 Packer and Stockyard Act enforcement.  
23 USDA has tremendous expertise here, but we got a  
24 lot of lawyers at DOJ that can back you up. So  
25 we're looking forward to and have started the

1 conversation at the staff level of how we can work  
2 collaboratively to ensure the federal government is  
3 taking full advantage of the authority that's  
4 delegated to us in the Packer and Stockyard Act.

5           Biotech, things coming off patent.

6 You know, patents have in the past been used to  
7 maintain or extend monopolies, and that's illegal,  
8 and you can be sure, Secretary, that we are going  
9 to be looking very closely at any attempt to  
10 maintain or extend a monopoly through an abuse of  
11 patent laws.

12           So that's generally -- I think I can  
13 assure each member of the panel -- I've been  
14 working with Attorney General Miller for not quite  
15 30 years but for a long time, and he knows that he  
16 can continue to count on the offices of the  
17 Department of Justice in the antitrust division to  
18 work across the board on issues as they confront  
19 the state attorneys general, not only in  
20 agriculture, but really, you know, you folks are on  
21 the front lines, and your attorneys general are the  
22 people that we look to to understand what is  
23 affecting you in your life every day and what's our  
24 appropriate role to support the attorneys general  
25 or to collaborate with them, and we will continue

1 to do that.

2                   You know, I got here a few minutes  
3 early, so I was able to talk with a lot of folks  
4 that are here today. I got to talk with the Food  
5 and Commercial Workers for a while. I got to talk  
6 with a lot of farmers who are here. My friends  
7 from the co-ops are here.

8                   And there's a couple of things that I  
9 would say. You know, you touched on it a little  
10 bit. The first question was, you know, what can  
11 antitrust really do? Well, there's a number of  
12 things. When we see mergers, we look closely at  
13 the resulting concentration from a merger. As the  
14 attorney general referenced, we recently sued Dean  
15 Foods because we think it resulted in too much  
16 concentration in milk in Wisconsin, Illinois, and  
17 Michigan, and we were joined by the attorneys  
18 general in those states in suing to break up that  
19 merger to try and get competition back in to get a  
20 better price to farmers and lower prices to  
21 consumers.

22                   We did JBS last year, same thing. We  
23 will continue to carefully and closely scrutinize  
24 every single merger that comes before us, look at  
25 it on its facts, and make a decision on the facts

1 of the merger. If it doesn't result in undue  
2 concentration and in lessening of competition and  
3 provides efficiency and helps farmers and growers  
4 get better prices and get more efficiency in what  
5 can get to consumers, that will be okay with us,  
6 but those that don't, we will stop. They will not  
7 go through during this Department of Justice.

8                   The other thing that we look at, and a  
9 lot of you have talked to me about this this  
10 morning as I moved around, big companies in the  
11 chain, wherever they are, and your views about how  
12 much power they have.

13                   Well, as one of my panelists said,  
14 look, in the United States -- I think it was  
15 Senator Grassley said big is not bad. But with big  
16 comes an awful lot of responsibility. When you  
17 have a tremendous amount of market share, you have  
18 the responsibility to behave in ways that keep the  
19 competitive playing field open. You cannot engage  
20 in acts that are designed to protect or extend your  
21 monopoly, so we look very, very closely across all  
22 sectors wherever you see an enterprise that has  
23 enormous market power.

24                   And you know, America is a great  
25 country because we have not only great farmers and

1 great small entrepreneurs, but we've grown some of  
2 the best companies in the world that are worldwide  
3 leaders, and for the most part I believe those  
4 companies take their obligations under the  
5 antitrust laws very, very seriously. But we take  
6 very seriously our obligation to enforce those  
7 laws, so we look very carefully.

8           The final thing I would say is  
9 something I think a lot of you in Iowa are familiar  
10 with. We have criminal authority in the antitrust  
11 division, and it is illegal for competitors to sit  
12 down together and fix prices. That's what you  
13 saw -- I don't know if you all out here have seen  
14 the movie that just came out called The Informant,  
15 and it's a movie about the lysine cartel, and we  
16 will, wherever we find -- particularly in the  
17 international sphere, wherever we find price fixing  
18 like that, we will prosecute that criminally.

19           So you have my commitment that we're  
20 going to do everything we can to make sure that  
21 it's a competitive agriculture economy, that  
22 farmers, growers, packers, processors, are all  
23 making a decent wage, and we're getting American  
24 consumers food on their table that's safe and  
25 healthy and a decent price.

1                   SECRETARY TOM VILSACK: Before we  
2 break for a short break, do you want any concluding  
3 comments?

4                   ATTORNEY GENERAL ERIC HOLDER: Well,  
5 you can see why I have such confidence in this  
6 woman; right? I mean I would say that what we're  
7 looking for is, like everybody has indicated,  
8 transparency so that everybody has a fair look into  
9 what's actually going on.

10                  And the overriding concern we have in  
11 the Justice Department is maintaining fairness.  
12 Doesn't mean we're going to put our thumb on the  
13 scale. We want everybody to have a fair shot. I  
14 think Senator Grassley is right. As Christine  
15 indicated, you know, big is not necessarily bad,  
16 but big can be bad if the power that comes from  
17 being big is misused, and that is simply not  
18 something that this Department of Justice is going  
19 to stand for. We will use every tool that we have  
20 to ensure fairness in the marketplace.

21                  It is important because at the end of  
22 the day, this is a national security matter. We  
23 talk about national security things in ways that --  
24 terrorism and all that. If we do not have a strong  
25 economy, a strong agricultural sector, this country



1 is not as strong as it can be, as strong as it  
2 needs to be. And for us, this is a priority in  
3 this Justice Department.

4 We're going to use all the tools that  
5 we have, the attention that we can generate in  
6 cooperation with our partners at USDA to make sure  
7 that we are as effective as we can, that we are as  
8 responsive as we can be in dealing with issues that  
9 you confront on a day-to-day basis.

10 At the end of the day and as we look  
11 back on our time in this administration, I hope  
12 we'll be able to say that we had a measurable  
13 impact on the lives of people in this state and  
14 other places, that their day-to-day lives -- that  
15 because of what we did that their lives have  
16 improved, and we don't lose sight of that.

17 You know, we talk about big and lofty  
18 ideals, projects, and programs, but we never lose  
19 sight of the fact that what we're talking about are  
20 our fellow citizens and how they live on a  
21 day-to-day basis, and so those are our guides. We  
22 are, as I said, bound and determined to do the  
23 right thing as we learn what the right thing is,  
24 and we want your input as we are trying to develop  
25 the policies that we will implement.

1                   SECRETARY TOM VILSACK: Okay. I want  
2 to thank the panelists. We're going to reset the  
3 panel to invite a number of farmers from this state  
4 and from other states to comment in the next panel  
5 discussion. It will take us about 15 minutes or so  
6 to do that, so we'll be back in about 15 minutes.  
7 Again, thanks to all for a very good discussion  
8 this morning.

9                   (Short recess.)

10                  SECRETARY TOM VILSACK: If folks could  
11 have a seat, please, we're going to get started.  
12 So if you can find a seat. If I could get  
13 everybody's attention, please. If folks could find  
14 a seat, I'd like to get started. Apologize for the  
15 late start.

16                  Let me first of all make an  
17 announcement in terms of a slight change in the  
18 schedule. Given the interest and the size of the  
19 crowd, as I understand it, when folks came in, they  
20 were given a number or folks who are interested in  
21 making a presentation were given a number. We  
22 wanted to extend a little bit the comment period  
23 for folks in the audience, so following this panel,  
24 we're going to have sandwiches available. We're  
25 going to encourage you to get your sandwiches

1 within a 20-minute time period and then come back.

2 I will still be here, and there will be several  
3 folks from the USDA and Department of Justice up  
4 here, and by lottery we'll simply call on people  
5 based on the numbers you've got.

6           Hopefully folks will limit their  
7 comments to a couple minutes so we can get another  
8 40 minutes of interaction with the folks in the  
9 audience in addition to what will happen at the end  
10 of the day. So that will come after this panel  
11 discussion.

12           This morning we're going to -- our  
13 second panel is going to be folks who are actually  
14 on the ground, so to speak, and in the field,  
15 farmers and ranchers who are dealing with the  
16 circumstances of agriculture today. I'm just going  
17 to briefly introduce all the panel members, and  
18 then we'll direct questions to them, so we'll move  
19 this along.

20           With us today is Eric Nelson who's a  
21 fourth generation farmer and cattle feeder from  
22 Iowa. Mr. Nelson has been a certified crop advisor  
23 since 1995. He's worked in the seed industry on  
24 sales and product management, and since 2004, he's  
25 worked as a farmer, cattle feeder, seed salesman,

1 and crop advisor.

2 Pam Johnson also joins us today. She  
3 and her family raise corn and soybeans in Floyd,  
4 Iowa. They've farmed for -- Do you really want me  
5 to say how long you've farmed? For a while. Let  
6 me just put it that way. And represents the fifth  
7 generation in the farming business, so we're happy  
8 to have Pam with us.

9 Ken Fawcett is an independent crop  
10 farmer who was raised on his family farm in West  
11 Branch. He attended Iowa State University,  
12 received a bachelor of science in farm operations,  
13 returned to his family farm in 1972. He raises  
14 corn and soybeans including non-GMO specialty  
15 soybeans and white corn.

16 Eddie Wise raises tilapia, sweet  
17 potatoes, and moss in Whittier, North Carolina,  
18 former Green Beret. He's also taught at Georgetown  
19 University and other institutions. He's active in  
20 the Black Farmers Agricultural Association and the  
21 Twin Rivers Swine Co-op.

22 Todd Wiley is a hog farm from Walker,  
23 Iowa. After graduating from Iowa State, he began  
24 work for a genetics company. In 1993 he went to  
25 work for his father with his father's diversified

1 farming operation. Shortly thereafter he founded  
2 Interstate Swine, LLC to handle the hog portion of  
3 his father's farm. He's got a farrow-to-finish  
4 operation.

5 And Jim Foster is a hog producer from  
6 Montgomery City, Missouri. He's farmed for over  
7 54 years, raises pure Hampshires and has raised a  
8 variety of crops including corn, soy, wheat,  
9 barley, and rye, so we have a good cross-section of  
10 folks from the Midwest and from the Southeast to  
11 discuss a variety of issues.

12 And I'm going to start just in the  
13 order that I read the names and start with Eric  
14 Nelson. Eric, I think you probably appreciate and  
15 understand the risks associated with both sides of  
16 this operation as your involvement with the seed  
17 business and your involvement on the farm.

18 So I'm interested in knowing from your  
19 perspective whether risks are higher or lower as a  
20 result of consolidation, or does the market  
21 essentially contribute to those risks, or does it  
22 mitigate them? So comments about that and the  
23 competition issue.

24 ERIC NELSON: Well, the risks are  
25 higher due to competition. And I guess is this

1 just a straight question portion or --

2 SECRETARY TOM VILSACK: It's a  
3 question and you can amplify on it.

4 ERIC NELSON: Okay. The fewer  
5 competitors, particularly in my cattle operation,  
6 it's not unusual in a week's time that we're down  
7 to 15 and 20 minutes cash market per week compared  
8 to a grain producer maybe has 1,500 minutes a week  
9 in order to make grain sales, and it's because  
10 there are only a handful of end users in the cattle  
11 market versus -- especially in this part of the  
12 world with the coming of the ethanol industry and  
13 all the ethanol plants that there are. There are  
14 many more end users for grain, but on the cattle  
15 side, it's become very constricted and on the seed  
16 side of things as well.

17 Sure, there are still many choices,  
18 but many times those choices are much more limited  
19 than they once were, and what's bothersome to me is  
20 customers will think that they're making choices  
21 from different companies when, in fact, they've  
22 purchased the same product in a different bag from  
23 different companies, but it's identical product.

24 SECRETARY TOM VILSACK: Pam, you also  
25 have interest in a seed business, and so you've

1     seen it from both sides. There was discussion  
2     earlier today about the increase in input costs not  
3     necessarily being associated or connected to prices  
4     that mid-sized operations are receiving.

5                     Is that just simply a fact of life, or  
6     do you think that there need to be some adjustments  
7     to the market?

8                     PAM JOHNSON: Well, I have prepared  
9     remarks about that but --

10                    SECRETARY TOM VILSACK: Feel free. I  
11     mean you all just amplify on the question and run  
12     with it.

13                    PAM JOHNSON: Okay. I'll address that  
14     in this, and then if you have further questions,  
15     I'd be glad to answer them.

16                    As you said, I farm in partnership  
17     with my husband and two sons. Our farm looks very  
18     different from those of my parents' generation.  
19     We've made progress in many areas and improved  
20     production. Today we raise three times as much  
21     corn on one acre of land as we did back in the  
22     1950s.

23                    We've taken advantage of tremendous  
24     advances in science and technology. These include  
25     improvements in genetics with corn breeding, the

1 advent of genetically modified crops, and the rapid  
2 adoption of biotechnology. We use precise  
3 placements of seeds and fertilizers and follow best  
4 management practices.

5           The use of GMO seeds makes economic  
6 and agronomic sense and provides efficacy with less  
7 trips across the field, less fuel, and a safer  
8 environment for us farmers, our families, and the  
9 environment.

10           We have adopted biotechnology in  
11 soybean and corn production. We're not required to  
12 plant biotech seeds but rather have looked at the  
13 value that the seed technology provides, and I  
14 guess that would be my answer to your question.  
15 And we consider the price of that value.

16           Like other farmers, we speak with our  
17 checkbooks. If it's overpriced, we do not buy it.  
18 We have a choice in the seeds and traits that we  
19 plant. I have seen charts showing a very robust  
20 pipeline of new traits that will be available to  
21 farmers in 2010 and beyond. These traits are not  
22 coming from one source but from multiple companies.  
23 And it will take significant industry investment in  
24 research and intellectual property protections by  
25 all companies so farmers like me have innovation,



1 choice, and competition in the marketplace.

2 The world is a very different place  
3 than it was for my parents. In today's complex  
4 global marketplace, we are all interconnected. If  
5 there's a financial meltdown in Dubai or Greece or  
6 a trade issue with South Korea or Japan, there are  
7 ripple effects that seriously impact my farm and  
8 our business in Floyd, Iowa.

9 For example, we experienced this  
10 domino effect back in 1998 as pork producers. The  
11 U.S. instituted a steel embargo which led the  
12 Russians to institute a poultry embargo which  
13 caused a glut of poultry on the world market which  
14 depressed hog prices to historic lows.

15 Challenging as it is to compete in  
16 this global marketplace, I would not choose to live  
17 in the past. The challenges are balanced by the  
18 opportunities. Life on the farm is better for me  
19 and my children. We have access to technologies,  
20 tools, and markets our parents could only dream  
21 about.

22 The U.S. is a maturing and aging  
23 economy with 98 percent of the world's population  
24 living outside our borders. There will be an  
25 additional 3 billion people by 2050. Agriculture

1 is a core strength of the United States, ensuring  
2 food and fuel security for both domestic and  
3 international needs. And our farmers want the  
4 opportunity to be an answer to those enormous  
5 needs.

6           We want to live in a more stable world  
7 where people are not fighting over food and oil.  
8 Science and governmental policy have a huge role to  
9 play in getting us there. The competition issue  
10 for me is in giving the American farmer the chance  
11 to compete on a level playing field, to supply  
12 food, meat, and energy for the world's needs. This  
13 means my government is involved in investments in  
14 ag research, biofuels policy, setting a more  
15 balanced tone in the food and fuel debate, and an  
16 increasing trade for all ag products.

17           We need more public and private  
18 investments in ag research. I've been privileged  
19 to serve as the corn farmer on a team that's  
20 providing direction and to advocate for the funding  
21 to the corn genome. This has been a strong  
22 partnership with the USDA, the National Science  
23 Foundation, and private industry. It's important  
24 because it opens the genetic potential of corn,  
25 puts all that information into the public domain so

1 all researchers have access.

2 Robust support of ag research needs to  
3 answer the fundamental scientific questions and get  
4 that research out to end users. I'm asking for  
5 supportive dollars but maybe, more importantly,  
6 support of a philosophy. Farmers are in a daily  
7 battle to defend what we do. We live in a culture  
8 where public opinion and policy is driven by media  
9 frenzy, and the affluent are disconnected from the  
10 hand that feeds them.

11 We are all engaged in this battle to  
12 tell our story, and we need our leaders, our  
13 legislators, and especially our secretary of  
14 agriculture to do more to set the tone to get to  
15 the truth. The tone has been very divisive.  
16 Production ag is being discounted. People are  
17 talking about food versus fuel, not food and fuel.  
18 There is anticorporate sentiment, anti-big  
19 sentiment, drawing lines between corporate factory  
20 farms and family farms, whatever those definitions  
21 mean. I don't know.

22 The media says big is bad. Corn is  
23 bad. Meat is bad. Farmers do not want to be  
24 pitted against each other. We all have a role to  
25 play, and the world needs all of us. Trend lines

1     for corn production on constant numbers of acres  
2     continue to climb. Farmers have the ability to  
3     produce more than enough grain for our customers.  
4     There has been good government support for corn  
5     grain to ethanol in the past, but it is waning at a  
6     time when there are great needs for biofuels and  
7     biobase materials.

8                     The issue at hand is the policy of  
9     indirect land use under the renewal of fuel  
10    standard. Corn to ethanol is not allowed to  
11    compete with gasoline on a level playing field and  
12    is penalized by rules while gas is given a bye.  
13    This means that I as a farmer in Iowa am held  
14    accountable for actions in farming practices of a  
15    farmer in Brazil.

16                    This is based on assumptions and  
17    economic modeling that even the economist makers  
18    have admitted are measuring the unmeasurable. This  
19    is simply not right or fair to the American farmer  
20    or the consumer.

21                    I would ask that my government adopt  
22    laws and rules that are grounded in reality and  
23    issue you an invitation to come out to the country  
24    and see and talk with us. I believe that the  
25    future of ag is very bright, but it will take all

1 of us working together to make it so.

2 Thank you for the opportunity to speak  
3 and tell my story, and I'd be happy to answer any  
4 questions.

5 SECRETARY TOM VILSACK: Thank you,  
6 Pam. What I'm trying to do with this process is to  
7 make sure that we have an opportunity for dialogue,  
8 so as we do these statements, if you want to  
9 respond to a question and then read the statement,  
10 that's great, but hopefully we can keep it within  
11 an appropriate time frame.

12 Ken, I notice that you are involved in  
13 niche markets, and I'm interested in whether or not  
14 in the niche market area you see a competitive  
15 issue at all and, if so, what the nature of that  
16 is.

17 KEN FAWCETT: Thank you, Secretary.  
18 I'd like to just briefly explain I'm part of a  
19 group that grows specialty crops, and some of those  
20 specialty crops are not genetically modified. And  
21 I'm also part of a group that became ISO certified.  
22 About 30 farmers in 2001 became ISO certified to  
23 verify our production practices and how we grow our  
24 crops, how we store our crops, and how we maintain  
25 the purity of those crops. We did this because of

1 the food scare, and we felt that our organization  
2 could provide quality products to the consumer.

3 As a result of this, we had very  
4 little interest from the food industry, and in 2004  
5 we learned of a soybean that was developed at Iowa  
6 State University that had traits that were very  
7 specific to the oil content and produced a quality  
8 oil, and I guess if I would, I'd like to share with  
9 you the history of Asoya and what it did in the  
10 last five years and what maybe we learned from it.

11 But this group of farmers thought we  
12 would grow seed, low linolenic soybean seed, and  
13 that the whole world would want this seed when the  
14 food labeling law came. Well, we had the seed in  
15 the ground, 10,000 acres, and we looked around, and  
16 there was nobody that wanted the seed. There was  
17 absolutely no demand for this new seed. So this  
18 group of farmers decided, well, we better start a  
19 company and process the soybeans into oil.

20 And that's exactly what Asoya did.  
21 They raised money within the group, and they took  
22 the beans from that production. 90 percent of that  
23 10,000 acres went into soybean oil. And we brought  
24 that soybean oil to the market, and Asoya  
25 accomplished many things there. The soybean oil we

1 brought was a very high quality and purity.

2 Dr. Fehr at Iowa State that developed the soybean  
3 said "This is even higher quality than I can  
4 maintain in the laboratory."

5 We brought an oil to the market that  
6 had no transfats, high stability, lower saturated  
7 fat, and a clean and lighter taste. After months  
8 and months of testing, because these food companies  
9 would test the product for months and months and  
10 months to see if it met their quality, they found  
11 many advantages for it in chips and baby food, in  
12 snack crackers and many more. There were high  
13 reviews by restaurants that gave it superior  
14 performance in fryers, and of course it was  
15 transfat free.

16 It was also accepted by the soybean  
17 producers that began to grow this soybean. They  
18 liked the fact that it was non-GMO, there was no  
19 technology fees, and they almost as time went on  
20 stood in line to grow the soybeans.

21 Farm Industry News gave us innovation  
22 award in 2008. And we felt that we'd defied the  
23 odds, and we'd brought a product to market which  
24 everyone said we couldn't do. But in the last few  
25 months, Asoya has been dramatically downsized.

1 It's no longer contracting soybeans, and I'd like  
2 to share a few things, I think, that created the  
3 difficulties.

4 There were wild swings in the  
5 marketplace, unprecedented high commodity prices,  
6 and it led to a dramatic decline in soybean acres  
7 in 2008. Nobody even wanted to plant soybeans when  
8 corn was \$6 an acre. We couldn't get acres in.

9 It also needed large amounts of  
10 capital, and that resulted in several injections of  
11 capital by the original members as well as outside  
12 venture capital. The corporate structure of the  
13 marketplace and the processors made the access to  
14 that market extremely difficult.

15 Then the time lag between the time  
16 when they finally decided they wanted the product  
17 and we could supply it was as much as 18 months.  
18 We had to get growers. We had to plant the crop.  
19 We had to process the crop. We had to supply the  
20 oil.

21 But most of all what happened to the  
22 economy in 2009 led the users to reassess what they  
23 could pay for soybean oils. They were interested  
24 in the cost and not the value of our product. They  
25 could blend lower quality oil such as canola or



1     3 percent linolenic soybeans to achieve their food  
2     labeling laws.

3                     And we feel the government wrongly  
4     allowed companies to label food as transfat free  
5     when you turn the bag around and it says it  
6     contains hydrogenated vegetable oil. And that's a  
7     contradiction.

8                     They've lowered serving sizes to  
9     unrealistic low levels so that they can get through  
10    the labeling law and say it has no transfat because  
11    the amount is so insignificant, and that's true if  
12    you have three chips. Most people don't eat three  
13    chips.

14                    But millions were spent to bring a new  
15    company, a healthy environmentally friendly  
16    company, and a cooking oil to the marketplace.  
17    Farmers have accepted the benefits of the seed and  
18    the procedure and the production for the storage  
19    and processing of those beans. There was thousands  
20    of hours put into this company plus all the  
21    investments.

22                    And I guess the lessons learned, if I  
23    could just maybe sum those up -- or maybe you want  
24    to ask a question because I see my time is up. But  
25    the summary, I guess, is it's very, very hard for a

1 small independent company to bring a food  
2 ingredient into the market. We thought we maybe  
3 had done it, and we failed. The specialty crop  
4 market is becoming concentrated just like other  
5 parts of the agricultural industry. Many specialty  
6 crops might exist, but often one company controls  
7 the contracting, the procedures for production, the  
8 market, and the payment.

9           The food industry is not overly  
10 interested in maintaining high-quality products or  
11 traceability when our group of ISO producers found  
12 practically no interest in food companies  
13 contacting us.

14           And I think my time is up, but I  
15 appreciate your time to talk about this.

16           SECRETARY TOM VILSACK: Thank you.  
17 Eddie, as you talk about your operation, I'd  
18 certainly appreciate your views on your experiences  
19 in a diversified operation in terms of the  
20 challenges that you face in terms of input costs  
21 and markets.

22           EDDIE WISE: I am a member -- there's  
23 26 of us -- independent raising all natural pork,  
24 and it's been a battle to get there, but some of  
25 the biggest problems we've encountered, for

1 instance, Whole Foods came in and offered all of us  
2 a contract. I'm the only one that didn't survive.  
3 I chose not to take the contract because once you  
4 take a contract, it's over with. Whenever they  
5 decide to shut you down, they shut you down.  
6 That's what it's basically all about.

7               So my partners and I have opened up a  
8 meat market and only to find out that in order to  
9 keep that meat market open, I'm going to have to  
10 put a processing facility on my farm because  
11 without being able to process it, I can't say I'm  
12 raising all natural pork.

13              So I've designed a processing  
14 facility, and you run into that same problem again  
15 when you need \$200,000 for this facility, and the  
16 banks look at you and kind of smile, and you still  
17 own that lien. And I encountered the same problem.  
18 I did nine years of commercial aquaponics research  
19 at the University of North Carolina. In '97 I  
20 moved 5,000 tilapia to my farm. When I went to  
21 market on tilapia, because I stripped out a hog  
22 house and put tanks in it, they refused to let me  
23 market my fish. But you got fish rushing in out of  
24 China by the tons, and we don't know what they're  
25 grown in.

1                   I haven't given up. I have got a  
2   facility designed, but all of it hinges on where  
3   the dollars are going to come from, and when you're  
4   already in debt, you don't need to get in more debt  
5   in order to operate. So basically what we're  
6   looking for is some grant money, some independent  
7   money, that will allow us to go to the next phase,  
8   but no matter what happens, I'm going to continue  
9   to be an independent hog grower. I love it. My  
10   father did this. He had one of the largest hog  
11   operations in North Carolina as a share cropper  
12   when I was five years old.

13                  And he left the farm when I was six  
14   and told my mother he was not going to work and get  
15   in debt for someone else. But I couldn't wait to  
16   find a farm, so I spent 27 years running around as  
17   a Green Beret, and I raised a few hogs, and every  
18   time I'd get about a hundred hogs, they'd send me  
19   somewhere. So I had about 200 head of hogs, all  
20   purebred Duroc, and they sent me out to the  
21   university to teach, so I taught at Howard for a  
22   year, Georgetown for a year, and all that time all  
23   I could think about is I got to get back home to my  
24   farm and get back to raising hogs.

25                  And so I finally got back, and the

1     wife loves it. She was born and raised in  
2     Washington, D.C., but she loves the farm. So we're  
3     having a good time. But we're not making that much  
4     money right now. But it's in the makings. You  
5     just have to be tough, and you have to stick it  
6     out.

7                     SECRETARY TOM VILSACK: Todd, you're a  
8     hog farmer, and so you're obviously involved in the  
9     marketing of your hogs. As you talk about your  
10    operation and give your statement, I'm interested  
11    in your views about what you think the proper  
12    balance is between a spot market and a contract in  
13    fixing prices.

14                    TODD WILEY: Thank you, Mr. Secretary.  
15    I'll be happy to answer that question, actually,  
16    through the course of my presentation.

17                    I came back -- as the introduction  
18    indicated, I came back to the farm in 1993 to a  
19    farm that was very diversified, corn, soybeans. We  
20    fed cattle, had a 160 sow farrow-to-finish  
21    operation.

22                    Five years later in 1998, anybody who  
23    was in here remembers what happened in '98 in the  
24    hog business. It wasn't real friendly, similar to  
25    what we've been through in the last couple of

1     years. I got in the hog business in 1998 with my  
2     father. We're equal partners in Interstate Swine,  
3     LLC, farrow-to-finish operation. I'm the managing  
4     partner.

5                     We've grown the business to  
6     1,150 sows, and we market about 26,000 market pigs  
7     a year, which by most industry standards is  
8     considered a fairly small operation. But I'll  
9     explain a little bit as to how we got to that  
10    point.

11                    The trends in agriculture is one of  
12    the things that we were asked to discuss, and as  
13    you know that there are less and less pork  
14    producers and less and less farmers in the industry  
15    as we've gone along. In part that has been  
16    required because of the management techniques and  
17    the economies of scale that needed to be acquired  
18    just in order to compete competitively.

19                    And so our operation is probably  
20    bigger now than what I would have envisioned  
21    15 years ago, but in order to capture the economies  
22    of scale, in order to utilize the management  
23    techniques and embrace the production standards  
24    that were set in our industry, in order for us to  
25    compete, we didn't have a whole lot of choice. It

1     was either to grow our business, to capture those  
2     economies, or to exit. And so as a managing  
3     partner, I chose to grow our business.

4                 I firmly believe that independent  
5     operators have every opportunity to succeed, but we  
6     do need to be able to utilize and capture the  
7     economies. We need to utilize the technology and  
8     management strategies that the best people in our  
9     industry use.

10                There are more -- there are less  
11     packers, rather, now that are more efficient in  
12     terms of harvesting and processing product, and for  
13     those of you who aren't close to the hog business,  
14     this is the way we are wired. We are wired least  
15     cost.

16                The industry is based upon producing a  
17     high quality, safe protein for the world  
18     consumption at least cost, and so that is part of  
19     the reason agriculture and pork production in  
20     particular looks the way that it does at the  
21     moment.

22                You talked about the spot market, and  
23     currently as low as 5 to 6 percent of the pigs are  
24     negotiated spot market. That sets a price formula  
25     for about 50 percent of the pigs in production. I

1 am one of those people who's on a formula price  
2 with two different packers.

3 I do that for a couple of reasons.

4 The primary reason, though, is because I fear not  
5 being able to market my pigs in a timely manner.  
6 For example, I have a barn that needs to be empty  
7 on Monday. I've got one load of pigs left in that  
8 barn. On Tuesday the power washer shows up to  
9 wash, disinfect, and clean that barn. On Wednesday  
10 and Thursday I reload it. I do not have the  
11 benefit of time because if you know anything about  
12 biology, biology doesn't wait on anybody.

13 I've got pigs coming from the  
14 nurseries. I've got pigs coming from the sow farms  
15 that need to move through my production system, and  
16 so I've been reluctant to engage in spot price  
17 marketing or negotiated sales. I think it's  
18 necessary. I'm glad somebody does it. But in my  
19 operation at this time, we do not.

20 I think it's also important to know  
21 that the packers need accurate price discovery as  
22 well. While I'm trying to get as much money from  
23 my pigs as I can, I acknowledge and understand the  
24 fact that they're trying to buy my pigs for the  
25 least amount that they can. And that's part of the



1 capitalism formula that we -- price discovery is  
2 important.

3 Intuitively, I believe that 5 to  
4 6 percent of those pigs, basically pricing the --  
5 another 50 percent, intuitively I struggle with  
6 that. Is that enough? But that's all. I can't  
7 find an economist that can give me the number. Is  
8 it 8 percent? Is it 12 percent? So that's an  
9 ongoing challenge philosophically in my mind.

10 We choose to sell our pigs to packers  
11 who don't maintain much ownership of pigs. I need  
12 to have a relationship long term with somebody who  
13 needs me. And so it's got to be a mutual  
14 beneficial relationship.

15 We do have marketing arrangements with  
16 both of the packers. One is a very rigid written  
17 contract, and the other one is a verbal agreement.  
18 My bank, my lender, has never required me to have  
19 that sort of relationship with packers. However, I  
20 am aware and know of lenders who do.

21 Challenges in our industry, especially  
22 currently, are huge, profitability being the  
23 biggest challenge. We suffered through a worldwide  
24 economic downturn, and on the heels of that came  
25 the H1N1 flu virus that unfortunately was misnamed

1 the swine flu.

2                   You know, the other challenge that we  
3 deal with are legislators who have minimal  
4 knowledge of modern production systems in  
5 agriculture, and so that's a challenge that we need  
6 to deal with.

7                   And finally, the one that probably has  
8 the longest-term effects for our business is a  
9 substantially higher input cost that we have to  
10 deal with, in part because of an ethanol policy  
11 that creates more competition for our primary feed  
12 grain in corn, and so we're concerned about what  
13 opportunities there are for that.

14                  And finally, probably the challenge  
15 that we're going to see coming forward is a higher  
16 cost in food, simply because our business is going  
17 to dictate that we have to receive more money for  
18 our product. Consequently, the consumer will have  
19 to pay more as well.

20                  I see my time is up. I still have  
21 more to say if you want to --

22                  SECRETARY TOM VILSACK: Another minute  
23 there.

24                  TODD WILEY: All right. There are no  
25 more -- I'm going to finish. When the secretary

1 of agriculture tells you you can finish, I believe  
2 I will.

3                   There is no magic wand to return  
4 farming and agriculture and pork production to the  
5 way it was 20 years ago. I fear that it's  
6 impractical at this point. I think we're too far  
7 down the road to structurally change our business  
8 to disallow packer ownership. There have been  
9 hundreds and probably thousands of pork producers  
10 in our state in the upper Midwest who have changed  
11 their production capacities to fit into the modern  
12 contemporary system. And to interrupt the modern  
13 contemporary system from a legislative standpoint  
14 will cause significant challenges for a lot of farm  
15 families.

16                   I guess in closing, if there was one  
17 more solution that I would pose and the one that  
18 has some long-term challenges for us, while I am  
19 not opposed to renewable fuels, I am not opposed to  
20 energy independence, I think that at this point in  
21 the ethanol industry, it's time to eliminate or at  
22 least minimize the import tariff, and I think that  
23 it's time that we allow the blenders' tax credit to  
24 expire.

25                   We're not opposed to competing for

1 corn as long as we can compete for it on a level  
2 playing field.

3 SECRETARY TOM VILSACK: Well, let's  
4 finish this first round in hearing from Jim. And  
5 Jim, you've heard Todd discuss his challenges in  
6 the livestock business and his views about formula  
7 marketing and spot market. I'd be curious as you  
8 give your statement your feelings about that.

9 JIM FOSTER: Okay. And I'd like to  
10 say, too, I imagine Eric probably has a little more  
11 time.

12 SECRETARY TOM VILSACK: Yeah, he does.  
13 We'll come back to him.

14 JIM FOSTER: Okay. Thank you. I'm  
15 humbled and proud to serve with people that seem so  
16 dedicated.

17 I started being excited about this  
18 problem eleven years ago and went to two of these  
19 things. They fell on deaf ears. I want to tell  
20 you, Mr. Secretary, I'm convinced this is not a dog  
21 and pony show. You folks mean business and I  
22 appreciate it.

23 I won't bore you with history of my  
24 55 years nonstop in hogs, but I'll tell you for  
25 sure I've seen it about all unfold in front of my

1 eyes. I plan to speak from the heart but shoot  
2 from the hip today about the serious trend we're  
3 in. My concern is not for me but for my kids and  
4 grandkids, make sure they can pursue the American  
5 dream as my wife and I have.

6 Believe me, hog production is real  
7 close to the poultry model whereby they would have  
8 to participate by invitation only. As I drove up  
9 yesterday, I remembered back to what I saw  
10 traveling the same highway in the '60s as I went to  
11 Austin, Minnesota, to a hog show. I saw home-built  
12 hog shelters on lots of rolling hills of Missouri  
13 and southern Iowa having sows with new litters. I  
14 saw barns across Iowa with concrete pads out front  
15 with 50 to 100 calves on feed. I saw veterinarians  
16 at work with their catch chute, feed trucks  
17 delivering feed, implement dealers delivering a new  
18 manure spreader or a feed grinder. I saw real  
19 economic growth all over north Missouri and  
20 southern Iowa.

21 Fast forward to today and what did I  
22 see? I saw where weeds grew up through the  
23 concrete cracks last winter because there was no  
24 cattle on feed. I see silos torn down or having  
25 been empty for decades. Remains of those portable

1 hog houses are seen stacked rotting in the corner  
2 of the field. Very little human activity around  
3 what was once a thriving economic model can be  
4 seen.

5                   What happened? Perhaps the biggest  
6 thing, we were taken back by the Chicago School of  
7 Economics where the biggest, toughest boar hog at  
8 the trough deserved to be the last one standing, no  
9 matter who got rooted out or even killed or  
10 economically killed by its tusks. He deserved to  
11 win because he would be the most efficient, and  
12 that efficiency would be transferred to the  
13 consumer. That Chicago school is hogwash.

14                   The recent economic global meltdown is  
15 the most vivid costly disaster caused by that  
16 thinking. Too big to let fail became the buzz  
17 word. Will the biggest of our packers and food  
18 retailers finally reach that level? We're probably  
19 close. If so, our food security is at risk.

20                   What is the true real cost of  
21 so-called cheap food? I'm glad to read the  
22 Illinois Agri-News that a leading proponent of that  
23 who's a civil court judge has turned 180 degrees  
24 after he saw the economic meltdown. I'm here today  
25 to tell you our price discovery system for finished

1 cattle and hogs is absolutely broken. Not cracked  
2 or weakened. It's broke.

3 90 percent of all market-ready hogs  
4 are on the packers' doors with very little  
5 competitive bidding. They're hogs owned and raised  
6 by him, are promised months ahead, unpriced, with  
7 the promise the producer will get 5 or \$10 a head  
8 over the corn belt average, but that is determined  
9 by the other 10 percent. Why would he bid  
10 competitively on the 10 percent? He'd rather slow  
11 down his kill speed.

12 In reality 90 percent is in possession  
13 or he could say he owns 90 percent every day  
14 without bidding. Would a city administrator who  
15 owns a paving business be allowed to contract his  
16 own company to do 90 percent of the city's streets?  
17 Heavens no. He'd be history.

18 Let's read Section 202 Part B of the  
19 Packers and Stockyards Act. "It shall be unlawful  
20 for any packer with any respect to livestock meats,  
21 meat products, or livestock products to give any  
22 undue or unreasonable preference or advantage to  
23 any person or locality in any respect whatsoever or  
24 subject any person or locality to unreasonable  
25 prejudice or disadvantage in any respect

1     whatsoever."

2                     How do packers on a daily basis who  
3     purchase 90 percent of their kill from  
4     themselves -- from themselves -- not violate? This  
5     is unrealistic. Market manipulation by packer-fed  
6     cattle was confirmed in '94 when a large packer  
7     addressed the Kansas Livestock Association telling  
8     them that companies use their own cattle to fill  
9     their needs when prices are up and stay out of the  
10    market when cattle are down. To me this is  
11    antitrust, the whole nine yards.

12                    When I was a kid, Sunday evenings my  
13    neighbor would have five or six trucks loaded --  
14    loading his fat cattle to go to the city. National  
15    Stockyards Illinois, he had fifteen commercial  
16    firms to choose from, six packers in St. Louis  
17    alone to bid on them. We truly had competition,  
18    and our cities and rural areas thrive. I can't say  
19    we can go back and open those stockyards. I don't  
20    mean that. But I think perhaps an electronic  
21    marketing system or something could be arranged.

22                    Back then packers agreed not to own  
23    cattle or hogs more than 14 days. I'm sorry. I'm  
24    up? Do I have to quit or can I continue?

25                    SECRETARY TOM VILSACK: Give you a



1 couple more minutes.

2 JIM FOSTER: So we didn't have captive  
3 supply hanging over our head. Then in '79 they  
4 kind of dropped that agreement. Packers built  
5 massive pork houses and feedlots, and farmers  
6 exited hogs in the '80s by the masses, and it's  
7 still going on.

8 Since 1980, we've lost 91 percent of  
9 our hog operations, 41 percent of all cattle  
10 operations, 80 percent of our dairy. Since '96, we  
11 lost 30,000 of our feedlots under a thousand head.  
12 Those are family farm feedlots. We are a net  
13 importer of beef.

14 Instead of identifying the real  
15 causes, we're advised to kill a pig, sell it at the  
16 farmer's market off the back of your pickup.  
17 Promote agritourism. Let the city people help you  
18 feed the pigs and milk the cow. Offer bed and  
19 breakfast. These are all noble ideas and I have  
20 super friends. This will not pay for a farm and  
21 buy health insurance.

22 Pay more check-off dollars so we can  
23 promote more exports. We've had exports of pork  
24 through the roof for the last two years and hogs in  
25 the 30s and 40s. There's some interesting things

1 on exports and imports. I'll show you those.

2 Cattle prices reached an all-time high  
3 in '03 when nearly all of our export stock --  
4 here's the chart. USDA. The red line is exports.  
5 You see they dropped, almost zero. The purple line  
6 is prices. Prices went through the roof when  
7 exports were almost zero. Why? Because imports  
8 also stopped. We stopped the Canadian cattle.  
9 Folks, that's a pretty big item.

10 Here's the other one. That's from  
11 competitive destruction. The packer had that  
12 competitive advantage when he could get those  
13 cattle out of Canada. You can see that from the  
14 graph. When he lost that ability, we once again  
15 had price discovery.

16 Here's the other one. U.S. beef  
17 cattle and trade with our 17 FDA countries that we  
18 have a free trade agreement with. The red marks  
19 mean we have a deficit with them. You see anything  
20 that doesn't have a red mark? The total over  
21 20 years, cumulative is \$37.6 billion. The brown  
22 line is imports to this country. The blue one is  
23 exports. We're losing. We have got to have a  
24 place at the table to get beef on the front burner  
25 for these things.

1                   Ron Plain, economist, University of  
2   Missouri studied trends for years, and he said we  
3   may have to return to the previous model of pork  
4   production whereby hogs are raised on the farm,  
5   where the corn was raised and attended by the  
6   family on that farm. That's a super idea. I'm not  
7   interested in going to 1,100 sows. My kids -- Ron  
8   Plain also said you got to be big. You got to be  
9   good. And you must have deep pockets. I think  
10   Glen Grimes told me that.

11                  My grandkids can have one of those.  
12   They can be good. They can't be big. They've got  
13   to start somewhere. They have to have market  
14   access. This is America, folks. They have to have  
15   market access.

16                  If Ron Plain's idea of the previous  
17   model of pork production is a reality, we've got to  
18   have price discovery, folks. There's no way my  
19   grandkids can fill all three. They can be good.  
20   We should not ask them to wait until they're 21,  
21   borrow a million dollars, put up barns for Cargill  
22   or Tyson to be in this industry. Again, this is  
23   America.

24                  In closing, I know our stockyards  
25   won't reopen. Everyone need not have chickens,

1 pigs, and a milk cow, but it's time we reinvented  
2 competitive market whereby my grandsons and  
3 granddaughters can sell their products.

4 And I want to say a great big thank  
5 you to our secretary and our Justice Department.  
6 Thanks for standing firm, Mr. Secretary, on the  
7 COOL. With Canada's 18th case of mad cow day  
8 before yesterday, this is important. We appreciate  
9 it. We appreciate the progress made on the Packers  
10 and Stockyards.

11 This is a new book. We appreciate  
12 that and I know it's not done. There's language in  
13 here that helps us. We've got to have it. Time is  
14 running out.

15 Again, I applaud your efforts. Thank  
16 you for this opportunity. And I have my speech  
17 right here for press so they don't get anything  
18 messed up.

19 Even more so, there's a yellow piece  
20 of paper I really wish somebody would take the time  
21 to read to this whole crowd. Is that too lengthy?  
22 It's a poem. Let's get Eric first.

23 SECRETARY TOM VILSACK: Let's give  
24 Eric a chance.

25 ERIC NELSON: Thank you,

1 Mr. Secretary. I responded earlier to what I  
2 thought was just a specific question, but I had  
3 prepared a more complete statement.

4           You know, in sitting here and  
5 listening to the comments, it really strikes me  
6 how, you know, one of the main reasons that I  
7 wanted to be here today is the next generation, and  
8 I want to thank my oldest son and my third oldest  
9 son for being home today out in some mud, not very  
10 pleasant conditions, working so that I'm able to be  
11 here today.

12           But I believe bringing young people  
13 into the production of agriculture is the most  
14 important thing there is to the future of our food  
15 supply and that bringing young people back is as  
16 simple as ensuring them a fair fighting chance at a  
17 profit.

18           I believe our government has an  
19 obligation written in law not to pick winners and  
20 losers but to act as a referee and ensure the laws  
21 and regulations dealing with anticompetitive  
22 practices are enforced. Henry Thoreau once wrote  
23 "The corporation has no conscience and thus is  
24 singularly driven for profit." That has become a  
25 problem for numerous industries but specifically

1     for the seed and the cattle industry.

2                   Hybrid seed corn provides a vehicle  
3     for increase like no other crop and has been key to  
4     the U.S. becoming the breadbasket of the world.  
5     But the U.S. seed industry, I believe, has been  
6     taken advantage of. I've seen technology fees to  
7     seed partners raised mid-contract in violation of  
8     the very contracts that the parties had. I've seen  
9     companies signing nonexclusive marketing agreements  
10    with one company only to have another company  
11    discontinue in retaliation another marketing  
12    agreement.

13                   I've seen misuse of confidential  
14    biotech seed stewardship agreements. I've seen  
15    pricing schemes using free seed that generally  
16    benefit the very large farmer at the expense of the  
17    small farmer. I've seen a reduction in  
18    conventional corn research in favor of biotech  
19    research. Not that biotech research has been bad,  
20    but the dollars spent on conventional research has  
21    gone through the floor, and that's put future  
22    risks -- future yields at risk for all farmers.

23                   I recently compared corn yield on the  
24    same farm that I farmed for 25 years and compared  
25    the years 1987 and this last year, 2009. Bushel

1     yield increased 25 percent, which is good. But the  
2     price of the seed and the chemical and the chemical  
3     weed control together had increased 153 percent in  
4     that same time.

5                     I think we all agree that output is  
6     greater, but a large part of that is price. And if  
7     prices were half of what they are, I think there  
8     would be a lot more grumbling about the price of  
9     seed today.

10                    I've also seen seed technology being  
11    sold with little or no consideration for the  
12    ill-effects caused by the products. I have copies  
13    of studies by Dr. Huber from Purdue and one by  
14    Kramer & Means that was published in the European  
15    Journal of Agronomy that show increased mycotoxins  
16    caused by increased Roundup use. I've seen the  
17    effectiveness of new technology be overstated at  
18    the expense of the farmer. Monsanto's Genuity  
19    Roundup Ready 2 Yield Soybeans are an example.

20                    And then finally, due to budget  
21    constraints, land grant institutions are no longer  
22    able to conduct the introspective research on seed  
23    that they once did. And the research they  
24    currently do is funded primarily by the seed  
25    companies themselves. Some will say that's

1 efficient, but I believe that the research that's  
2 purchased by the seed companies tends to be rather  
3 self-serving.

4               So how do we fix the industry? I say  
5 we disallow any monopolies and the anticompetitive  
6 activities that come with them. Somehow require  
7 that all germplasm be made available to the public  
8 through land grants or other public entities.

9               At the beginning -- you know, these  
10 inbreds, B73, 017, Ohio 43 were all generated  
11 publicly. And somehow, you know, my alma mater  
12 let -- Dr. Hallauer let some of those inbreds go  
13 without getting a license fee because he wanted  
14 them to stay in the public realm, and in the public  
15 realm, I believe they should stay to spur  
16 competition.

17              I say that we should enforce the  
18 Robinson-Patman Act of 1936 which prevents  
19 predatory pricing of like products. I've seen  
20 across a section the difference in the price of  
21 seed can make as much as -- in the same bag of seed  
22 can make a \$70 an acre difference in advantage to  
23 the large grower versus the small grower. If that  
24 large grower is farming 12,000 acres, that's a  
25 million dollars more to the bottom line that he can



1     buy new farm with every year. And so there's no  
2     surprise that the larger continue to get large with  
3     advantages such as that.

4                     I'd like to require technology to be  
5     proven safe and effective which could be  
6     accomplished by properly funding experiment  
7     stations in the land grant university system, and  
8     also, I think we have to re-examine the safety and  
9     wisdom of granting long-term patents on living  
10    things.

11                    I also believe the statement the  
12    corporation has no conscience is very relevant to  
13    the U.S. cattle industry. It's been stated earlier  
14    that four beef packers currently have 80 percent of  
15    the slaughter capacity. Cap to supply agreements  
16    reduce competition, and we need transparency.  
17    Also, the geographic center of cattle feeding and  
18    meat packing is illogically located far away from  
19    the feed resources that we have right here.

20                    Unlike grain, cattle are perishable  
21    and can't be stored until markets rebound. Due to  
22    that fact, domestic prices are very susceptible to  
23    changes in foreign demand.

24                    And finally, retail margins are  
25    excessive. When I sell a beef animal, it's worth

1     around \$1,200 at market. After having invested  
2     time and feed for 18 months, within three or four  
3     days the wholesale, packing, and retail segments of  
4     the industry parlay that 1,200 into 2,400 or more  
5     dollars. I don't believe that would happen in a  
6     truly competitive environment.

7                     So how do we help the cattle industry?  
8     Break up the beef packing monopoly. The Packers  
9     and Stockyards has the auspices to do that, I  
10    believe. Require foreign contracts to be  
11    transparent. And there's been a lot of talk about  
12    transparency, but I mean really transparent. From  
13    the day that a forward contract is entered into  
14    that it's made public, not the day the cattle are  
15    harvested, because the users of the forward  
16    contracts will fill holes for months at a time  
17    which end up meaning that there may not be a cash  
18    market for weeks or months at a time.

19                    We need to revisit free trade  
20    agreements to slow imports in times of weak foreign  
21    demand, enforce country of origin labeling the way  
22    it was written, and spur retail competition and  
23    thus beef demand.

24                    Now in closing, I want to quote one of  
25    the famous speeches that's ever been given in this

1 country. President Lincoln at Gettysburg referred  
2 to government of the people, by the people, and for  
3 the people. He didn't refer to government of the  
4 corporation, by the corporation, and for the  
5 corporation.

6 I've asked myself, would all of those  
7 who have died before Gettysburg and since  
8 preserving this republic want only a handful of  
9 companies completely controlling our country, its  
10 economy, and its food supply? I don't believe they  
11 would, and I further believe laws exist to prevent  
12 that thing from happening so long as they're  
13 enforced. Thank you.

14 SECRETARY TOM VILSACK: Let me to all  
15 the panel members ask somewhat the same question I  
16 asked of the first panel, which is if you had to  
17 focus on one aspect of this, whether it's the  
18 pricing, marketing, the input costs, enforcement,  
19 what one suggestion would you make to improve the  
20 circumstances and situations for farm families in  
21 the country? What's the one thing you would want  
22 us to focus on first? Start --

23 JIM FOSTER: Start here?

24 SECRETARY TOM VILSACK: Yeah.

25 JIM FOSTER: I think we've got to get

1     this captive ownership of packers to where they  
2     dwindle down, and I realize this is a problem with  
3     a lot of family farmers or contract growers. You  
4     can't just bring the hammer down tomorrow.

5                     This thing of having 90 percent of  
6     their needs covered with very little bidding is  
7     destroying our market for eternity. To me that's  
8     No. 1.

9                     SECRETARY TOM VILSACK: Just keep  
10    going down the line.

11                    TODD WILEY: Yeah. I'm sorry. I'm  
12    still thinking. The question was posed to me by  
13    the DOJ when they first made contact with me about  
14    the concerns I would have in my operation and what  
15    solutions could be provided. And I think that, you  
16    know, that lends itself to your question.

17                    The biggest thing that could happen as  
18    far as I'm concerned -- I've told you before that  
19    the pork industry is wired least cost. The biggest  
20    thing that could happen for me in my business is to  
21    expand and grow our exports.

22                    EDDIE WISE: I think one of the  
23    biggest things that would help right now this  
24    country is with the small independent farmers'  
25    niche marketing. This is the thing that can take

1 home the top, and without niche marketing, doesn't  
2 matter what you're producing. Nobody is going to  
3 buy it.

4 KEN FAWCETT: Yeah. I agree, and I  
5 would expand on that. I think what farmers need is  
6 opportunity. They need the opportunity to make  
7 choices of what they're going to grow and how  
8 they're going to grow it in the best way possible,  
9 and that's going to -- needs to be free of the  
10 corporations that control so much of the industry.

11 And the other side of that is the  
12 consumer needs the opportunity to buy what they  
13 want to without the corporations putting up what  
14 they want to sell to them, which I think is what we  
15 have today. Corporations decide what people want  
16 too much.

17 PAM JOHNSON: I think I'll go back to  
18 my statement about philosophy, and I've enjoyed  
19 listening to everybody speak on the panel. We all  
20 come from a different place. We all farm  
21 differently, and once again, I think that there's  
22 room for all of us.

23 I started out very small too with ten  
24 sows, and my parents, my dad had to go to work in  
25 town to support our family. So we've all come from

1 different places, and we've ended up in different  
2 places, and we have different philosophies.

3 But I really would ask that not only  
4 of the -- what the government can do for me because  
5 that was a question that was asked but that  
6 agriculture needs to start pulling together and  
7 quit being so divisive about "Only the way I do  
8 things is right." There's room for many, many  
9 kinds of agriculture.

10 I see that in my community. I have  
11 small truck farmers working to supply local  
12 groceries. I see people that have a small number  
13 of pigs. I see a lot of farmers like Todd. And  
14 instead of fighting each other, I think we need  
15 each other because one of our segment cannot fill  
16 what the growing population needs.

17 ERIC NELSON: Obviously the seed  
18 industry is a keen interest of mine having spent so  
19 many years, and the seed purchase, there's nothing  
20 more important each year, obviously, for the income  
21 side of a crop farmer, and obviously it's important  
22 on the expense side as well, but I think there has  
23 to be a vehicle in which the worthiness of these  
24 new products are proven before they can be sold  
25 because I've seen it time and time again where new

1 products are rushed to the market as quickly as  
2 television ads can be put on television promoting  
3 how good they are, but with the science behind them  
4 is transparent as far as whether they actually have  
5 benefits to the people that are buying them.

6                   And I think that that's critical  
7 because there's an assumption that's being made by  
8 many farmers that, well, you know, they're told  
9 that they're really good, but I think that they are  
10 assuming that there's somebody that's checking up  
11 on the worthiness of these products, and I think  
12 the land grant universities at one time carried out  
13 that mission, but because of funding constraints, I  
14 don't really see them being able to do that  
15 anymore.

16                   SECRETARY TOM VILSACK: As I look at  
17 the statistics in rural America, I must confess I  
18 have some very deep concerns about the future of  
19 this country because of the future of rural  
20 America. When I see that 900,000 of America's  
21 farmers, now about 2.2 million in number, have  
22 themselves to work 200 days that are off the farm,  
23 essentially a full-time job off the farm, to be  
24 able to keep the farm and I see a net loss of  
25 40,000 operations in the last five years in the

1 mid- to larger size activities and farming  
2 operations and I see a substantial decrease in the  
3 number of farms totally in this country, I just  
4 have some genuine concerns about whether or not  
5 we've got the right mix in terms of providing  
6 opportunities.

7                   So the question I have for the panel  
8 is this: If we take the steps that you've just  
9 outlined, are we going to be able -- five years  
10 from now, ten years from now, a generation from  
11 now, are we going to be talking about fewer and  
12 fewer farmers, or are we going to be talking about  
13 reversing a trend that's been in place for a number  
14 of decades now?

15                   Can we actually provide real  
16 opportunity for young people to get into this  
17 business? Because you've got an aging nature of  
18 farmers. Farmers have aged on average two years in  
19 the last five years, now 57 years of age, average  
20 age of farmers. 30 percent increase in the number  
21 of farmers over the age of 75; 20 percent decrease  
22 in the number of farmers under the age of 25.

23                   And part of what I want to hear and  
24 what I want to learn is, what are we going to be  
25 able to do differently, or what do we have to do



1 more of to be able to reverse these trends?

2 Because I think this country has got to get very  
3 serious about the future of rural communities  
4 because we're losing population, and that  
5 population is aging.

6 And so that you understand what I'm  
7 talking about, one-sixth of America's population  
8 now lives in rural communities, but 45 percent of  
9 the people who serve us in uniform in the military  
10 come from our rural communities. It is the core of  
11 this country. And if it continues to shrink and  
12 continues to age and it continues to be less  
13 opportunity, then I think our country will be far  
14 worse off for it.

15 So I'm interested in hearing from this  
16 panel, what specifically do we need to do to  
17 increase the number of farmers? You know, you can  
18 talk about all of the usual responses, and I've  
19 heard some of them here today. But we're doing a  
20 lot of what you all have asked us to do. We're,  
21 you know, expanding exports. Exports have doubled  
22 in the last ten years. Doubled.

23 We continue to -- we're the third  
24 largest year in history of exports in agriculture  
25 this year is projected. Two years ago it was the

1 highest level of exports, so we are doing a lot of  
2 that. What else do we need to do in order to make  
3 sure that there is, in fact, a future for young  
4 people in this business? Start with you.

5 ERIC NELSON: Well, again, I'm tickled  
6 to have a chance to respond because I think this is  
7 what this is all about. I look at the USDA  
8 payments and the caps. I don't see any  
9 justification for payments to the largest  
10 operators. In fact, I'm aware of numerous ones  
11 that they have so many different farm setups and  
12 entities that they've certainly invented the rules  
13 as they're written and are capturing huge, huge  
14 amounts of subsidies. That is one way to bring  
15 some young folks back.

16 Being an operator of what I would like  
17 to call a more holistic livestock operation where I  
18 buy very little commercial fertilizer, and my  
19 livestock operation really is my fertilizer  
20 manufacturing plant, it's a good way to do things,  
21 I believe, and it was the way that was done years  
22 ago everywhere, and if there are any ways to  
23 promote that and have, you know, more local  
24 agriculture and more holistic ag to better utilize  
25 the manure resources that we have in livestock.

1 SECRETARY TOM VILSACK: Pam?

2 PAM JOHNSON: This is a great  
3 question. I think all of us could talk for an hour  
4 about it. I think for one thing, our kids have to  
5 have great educations from land grant universities.  
6 I have two sons. One came back full-time to the  
7 farm. That didn't just happen. You have to add so  
8 much income to your business to bring them back,  
9 and we expanded in a lot of areas, a seed business  
10 for him to operate. Just look for every single  
11 opportunity that's out there. He does some  
12 trucking.

13 Second son is teaching school, ag ed,  
14 and works the farm on the weekends. I come from a  
15 great community. We've had a lot of people in our  
16 county, in Floyd County, that have worked on rural  
17 ag development for a long time. I was lucky to be  
18 in on one of those panels.

19 We've looked at a lot of things, and I  
20 think as we look into the future, you didn't let me  
21 tell how old I am, but I'm the same age that you  
22 are and --

23 ATTORNEY GENERAL MILLER: A young man.

24 SECRETARY TOM VILSACK: You look  
25 pretty good for 29.

1                   PAM JOHNSON: I think there's one  
2    thing we have to realize, that agriculture is not  
3    going to look like it did back when I was a kid and  
4    you were a kid, but that being said, there are  
5    opportunities out there.

6                   In my community we've seen a lot of  
7    young people come back. My kids went to Iowa  
8    State. We've seen their colleagues come back, and  
9    maybe they can't do production agriculture  
10   full-time, but there are jobs in ethanol plants.  
11   There are grain buyers.

12                  So maybe we can't create a place where  
13   everybody can be in production agriculture or what  
14   it used to be, but there is potential for a lot of  
15   jobs in the rural community, whether it's in  
16   biofuels, biorenewables, just a whole bunch of  
17   auxiliary businesses that can happen. It doesn't  
18   just happen. It depends on the leadership that you  
19   have in your county. And I've been lucky.

20                  KEN FAWCETT: I think of a friend that  
21   visited the farm years ago and commented to us that  
22   "Boy, a farmer has to do everything. He has to be  
23   an accountant, a mechanic, an electrician, a  
24   bookkeeper," you know, just on and on and on, and I  
25   guess add to that now maybe a marketer, and that's

1 asking farmers to do a lot, and I think it's almost  
2 asking them too much.

3 But I agree with some of the things  
4 mentioned. I do think it's time to tie, you know,  
5 payments to farmers more to their conservation  
6 practices, to the way they produce crops more than  
7 just the volume of crops that are produced. I know  
8 that's not popular, but I think that trend needs to  
9 continue.

10 And I think we do need to look at  
11 specialty crops. There's no reason Iowa should be  
12 just corn and soybeans or a particular kind of corn  
13 and soybeans. I think the potential to grow a  
14 variety of different kinds of crops in the future  
15 is going to be much greater.

16 I think we need to look at who is  
17 going to be offering those, and how are they going  
18 to offer them, and does it present opportunity to  
19 the farmer, or are they offered to the farmer just  
20 as we'll pay X dollars per acre if you grow this  
21 crop for us? I think the farmer needs to take  
22 ownership in those new kinds of crops in order to  
23 help the health of agriculture.

24 EDDIE WISE: Mr. Secretary, I think  
25 the solution lies in our 4-H program, extended 4-H

1 program, from the standpoint that a kid that takes  
2 the animal and raises it and competes and he sells  
3 it, but the problem with that is how that that  
4 child take it to the next level, and he looks at  
5 his parents, and we are doing nonfarm income, and  
6 so what's nonfarm income? It's that income that  
7 your father has to make in order to stay on the  
8 farm.

9                   So my kids went out and got jobs and  
10 are working. My grandkids break their neck to get  
11 to the farm. They want to learn how to raise the  
12 hogs and all the things that I'm doing. So I have  
13 a generation of kids that's coming on that's going  
14 to take it up, but most kids once they leave the  
15 farm and start making money, they say, "Well,  
16 what's the use of going back? Pop is still  
17 struggling, and I'm having to loan him money."

18                   So we need to extend those programs to  
19 where those kids can come out of high school, and  
20 if he wants to go into farming, he can go into  
21 farming. If he wants to go into college, he can go  
22 to college. All of our kids are not college  
23 material, but they are farming. They have the  
24 potential to be outstanding farmers if afforded the  
25 opportunity. If that kid knows he can make some

1 money, he'll work.

2 SECRETARY TOM VILSACK: Todd.

3 TODD WILEY: I've got a number of  
4 answers, I guess, to that question. I had a  
5 brother that was involved in our farming operation  
6 up until '98, and this was actually early in '98  
7 before the thing really hit the fan, and he chose  
8 to leave our operation, and it had nothing to do  
9 with economics or finances, and so I think we got  
10 to be a little careful equating the decrease in the  
11 number of farmers in our country being all finance  
12 driven. There are other reasons people have left  
13 the farm.

14 There is one thing that I think that  
15 could happen in terms of a revenue assurance  
16 program. We have a product available to us called  
17 a Livestock Gross Margin product, and I've never  
18 engaged in it, but I'm told that it's cost  
19 prohibitive, and so it might be worth investigating  
20 that product where if there was some sort of  
21 revenue assurance available to us that was  
22 affordable and practical to use, we might be able  
23 to engage in it and manage our margins some better.

24 Mr. Secretary, I want to thank you for  
25 the exports that we have and the work that you have

1     done in light of your comment here just a few  
2     minutes ago. And I guess to answer your question,  
3     how do we get more people involved in production in  
4     agriculture, people will go where the money is, and  
5     if the margins are higher, we'll get more people  
6     involved in the businesses.

7                     And so in order for margins to be  
8     higher, costs have to be lower or revenue has to  
9     improve, and revenue doesn't improve until we have  
10    an increase in domestic consumption or we improve  
11    and increase our exports.

12                    China is an enormous opportunity for  
13    us in the pork business, and I think as time goes  
14    on that as their economy continues to improve --  
15    and one of the solutions that actually I identified  
16    in my presentation was is as their economy  
17    continues to improve and their middle class becomes  
18    bigger and wealthier, we have enormous  
19    opportunities in the livestock business in this  
20    country to export there. Thank you.

21                    JIM FOSTER: I have several ideas. I  
22    think we've got to work on entry to the business.  
23    That's the big item. I totally agree 100 percent  
24    with Eric that we need some logical limits on farm  
25    payments. I think it should be per acre, and I



1 know a bunch of people will beat me up on this.

2 I'm not interested in my tax dollars paying for  
3 somebody to farm 10,000 acres and eat me. There  
4 should be a limit somewhere that you farm so many  
5 acres. After that, buddy, you're on your own.

6 If that were the case, there would be  
7 more medium to even big-size tractors with kids on  
8 them farming.

9 Another thing, these government  
10 guaranteed loans, and I hope to heavens they've  
11 quit. A USDA government guaranteed loan, if you  
12 don't have any equity, you can get out there and  
13 plant a million dollar building on ten acres. If  
14 you've got a good enough contract, the government  
15 will back that loan through the bank. Now, who  
16 would give you a good contract? Cargill, Tyson.  
17 This just eats us, my grandkids getting started,  
18 because the government guaranteed loan, would they  
19 get a government guaranteed loan to build ten  
20 piddly hog houses? No. That's got to stop.

21 This EQIP money has to be brought back  
22 down. I'm not interested in helping clean up  
23 somebody's mega-mess. I'm interested in my kids  
24 maybe having a chance. We've got to scale this  
25 whole thing down to where it benefits beginners

1     instead of eating beginners' lunch, which it's  
2     doing right now.

3                     One thing I want to add, Christine  
4     Varney, I want to thank you personally for the  
5     efforts you made on the JBS. Our adjoining county,  
6     Audrain County, Missouri, now has three fat cattle  
7     buyers because you stopped JBS from buying National  
8     Beef. Three ain't enough. We'd have had two. And  
9     I appreciate it from my heart.

10                    SECRETARY TOM VILSACK: I'm going to  
11     let Christine and General Miller, if he's  
12     interested in making any comments, and then we will  
13     wrap it up for lunch, and then we'll take  
14     20 minutes and come back and listen to more  
15     farming.

16                    ASSISTANT ATTORNEY GENERAL CHRISTINE  
17     VARNEY: Thank you very much, Secretary, and thank  
18     you for your kind words for the work that all the  
19     division does.

20                    One of the things that occurs to me  
21     sitting listening to this panel is that, you know,  
22     we've got a lot of our people here, and you guys  
23     have such long history and expertise in the Packers  
24     and Stockyard Act and we have such strong  
25     enforcement on the antitrust side, I'm thinking

1     maybe we need a little joint task force so that  
2     maybe I detail some lawyers over to you guys if  
3     you'll take them, and we'll really go through on  
4     the Packers and Stockyard Act and think about what  
5     we might do --

6                     SECRETARY TOM VILSACK:  Let's see.  
7     Dudley Butler, you want to stand up?  There's our  
8     Packer and Stockyard guy.  Dudley, would you take  
9     more lawyers over there to help you out?

10                    DUDLEY BUTLER:  Absolutely, take all  
11     you want to send.

12                    ASSISTANT ATTORNEY GENERAL CHRISTINE  
13     VARNEY:  That clearly is one of the things that  
14     comes out listening to this group right here.  Way  
15     out of my bailiwick, but I said to Tom Miller I  
16     think we've got to figure out how to get Eddie's  
17     200,000.  That's on my list.  So I don't know what  
18     I can do.

19                    SECRETARY TOM VILSACK:  I'll talk to  
20     Eddie afterwards.

21                    ASSISTANT ATTORNEY GENERAL CHRISTINE  
22     VARNEY:  Okay.  This has been very informative for  
23     me.  I'm going to continue to be here at the lunch  
24     and through the afternoon.  My staff is here too.  
25     Looking for the places where what I can do

1 intersects with what the USDA can do is a new area  
2 for us, and I would like any of you to feel free to  
3 come up and talk to me about where you see as  
4 opportunities that we may be able to effectively  
5 address some of these problems, and thanks for  
6 having me. Iowa is really a great place. I've  
7 been delighted to be here.

8 ATTORNEY GENERAL MILLER: Just  
9 following up on Chris's in a way, Mr. Secretary, if  
10 we could get a group of state attorney generals or  
11 assistant attorney generals who know a lot more of  
12 the substance than we do, they're working in the ag  
13 area, antitrust, and consumers to work with Packers  
14 and Stockyards to brainstorm, to work together, to  
15 think about ideas, to try and get the results that  
16 people want here today.

17 SECRETARY TOM VILSACK: Great. Let me  
18 just take just two more minutes to talk to you  
19 about what USDA is doing because as I listen to the  
20 comments today, it occurs to me that we need to do  
21 an even better job of getting the word out about  
22 what we are trying to do to try to rebuild this  
23 rural economy.

24 The president has been very clear to  
25 me that he is very concerned about the status of

1 the rural economy and wants a new framework, so  
2 some of the things that we've done recently is to  
3 take a look at ways in which we can help farmers  
4 get access to additional information.

5 We've talked and heard a lot about the  
6 need for transparency, and we have more work to do  
7 in that area, but the expansion of broadband access  
8 and resources to rural and remote areas is one of  
9 the priorities for this USDA.

10 We're in the process now of awarding  
11 well over \$2 1/2 million of grants and loans to  
12 expand broadband access so the farmers and ranchers  
13 have access to real-time information. It will also  
14 help small businesses in rural communities  
15 potentially expand their markets from local to  
16 global.

17 We are also very aggressively  
18 promoting renewable energy and biofuel efforts.  
19 The RFS2 that recently was announced basically  
20 gives us a very specific green light to go ahead  
21 with both corn-based ethanol as well as other feed  
22 stocks. We're going to make this a national effort  
23 to increase our fuel efforts.

24 If we reach the 36 billion gallon  
25 threshold set by Congress, there will over the next

1 decade or so be \$95 billion invested in new  
2 facilities. It will generate, either directly or  
3 indirectly, 807,000 new jobs, so this is a very  
4 important part of what we are trying to do, and we  
5 are in the process of accelerating implementation  
6 of farm bill regulations that will provide  
7 resources under the BCAP program for farmers and  
8 folks who are providing alternative feedstocks,  
9 providing additional resources for the construction  
10 of biorefineries as well as retrofitting existing  
11 biorefineries to become efficient, so there's a  
12 major effort in this regard.

13               We continue to advocate to the EPA for  
14 an increase in the blend rate, which I believe  
15 eventually they will come to the conclusion there  
16 are indeed a number of engines capable of taking  
17 E15, and then we'll set up a distribution system,  
18 so that's a second strategy.

19               The third strategy has to do with  
20 local production and local consumption, and to  
21 Eric's concerns and -- Eddie's concerns, rather,  
22 about the opportunity to have a processing facility  
23 on your farm, there are resources available, and  
24 we'll talk afterwards, to try to create a greater  
25 link between local production and local consumption

1     so that we can provide more opportunities,  
2     additional market opportunities. Schools,  
3     hospitals, prisons, colleges that are located in  
4     rural communities have to purchase their food from  
5     someplace. We'd like to be able to at least give  
6     them the opportunity to do more local purchasing in  
7     the region.

8                 So there's an aggressive effort under  
9     Know Your Farmer; Know Your Food effort to  
10    reconnect people with their food source, so there  
11    is a greater appreciation for what farmers and  
12    ranchers do in this country.

13                I think there's a lack of  
14    understanding and appreciation not only as far as  
15    food but also water resources as well as fuel and  
16    job opportunities it creates.

17                We're working very hard on  
18    conservation and forest restoration to create new  
19    opportunities from that and to expand significantly  
20    the tourism opportunities associated with hunting  
21    and fishing as a strategy.

22                And finally, we're looking at  
23    ecosystem markets, whether it's water or carbon or  
24    habitat protections, to funnel additional resources  
25    to encourage land owners to use their land as

1 efficiently and as effectively as possible to  
2 generate as much income. The whole point of this  
3 is to try to diversify income opportunities.

4           And part of what we're doing here is  
5 to try to determine whether or not there are  
6 additional steps that we need to take in more  
7 traditional processes to make sure that there is a  
8 level playing field for farmers and ranchers.

9           And finally, we have a major export  
10 initiative that is focused on really distinguishing  
11 between markets. Not all markets are the same.  
12 There's been reference to China, which is certainly  
13 a potential market, but there are other markets  
14 that maybe in the short term have even greater  
15 potential for us if we establish relationships and  
16 break down barriers that exist.

17           And we're also focusing, obviously, on  
18 biotechnology strategy because candidly, the  
19 country has not done as good a job promoting  
20 biotechnology opportunities as perhaps it should,  
21 and that's all part of the president's national  
22 export initiative.

23           So on all these fronts, there is  
24 activity working at USDA and because we are very  
25 concerned -- and I'll end where I started -- very



1 concerned about the future of rural America and  
2 very concerned about the value system that is so  
3 centered in rural America.

4 With that we're going to take  
5 20 minutes to get your sandwiches, come on back.  
6 We'll listen to farmers for a little bit, and then  
7 we'll have our next panel.

8 (Short recess.)

9 PHIL WEISER: My name is Phil Weiser.  
10 I would start by underscoring this is a process,  
11 and we are looking forward not only to the comments  
12 today but more importantly the ongoing dialogue  
13 that this kicks off in our ensuing workshops, the  
14 comment period which continues to be open for  
15 those -- we have 15,000, but we are hoping we will  
16 get additional and continuing comments that are now  
17 available on our website.

18 For those who go to the relevant  
19 website, all 15,000 comments are available, so you  
20 can also comment on other people's comments.

21 With me here is John Ferrell from the  
22 USDA, and together we're going to moderate the  
23 public session, inviting people up for two-minute  
24 statements, and we will have it at this point and  
25 then again at the end of the day. John.

1                   JOHN FERRELL: So we'll go ahead and  
2 get started now, and I'll start -- I'll read off  
3 ten numbers, and can you hear me?

4                   UNIDENTIFIED MALE: Can't hear you.

5                   JOHN FERRELL: Okay. Well, I'm going  
6 to read off ten numbers, and so what you'll want to  
7 do is line up, as Phil said, and you'll just have  
8 two minutes, and we're going to work through as  
9 many people as we can because we want to hear from  
10 as many as we can from everybody that's attending  
11 today, so I'm going to go ahead and start doing  
12 that.

13                   We have 383, 522, 390, 396, 485, 391,  
14 386.

15                   PHIL WEISER: So I'm going to read  
16 these again, and if none of these individuals are  
17 here at this point in time, we'll give them a  
18 chance at the end of the day. We know some people  
19 may have had to go or in some cases felt like their  
20 comments were said. Let's try again. 383.

21                   JOHN FERRELL: 383, 390, 396, 485,  
22 386, 522, 391.

23                   PHIL WEISER: And I think we have one  
24 of that group. What's your number, sir?

25                   UNIDENTIFIED MALE: Yeah. 396.

1                   PHIL WEISER: 396. We've got you, and  
2 we have six compatriots who are not here. Let's  
3 take another six and see if we can maybe find  
4 another person who's intent on speaking with us.

5                   JOHN FERRELL: 385, 409, 392, 465,  
6 411, 441.

7                   PHIL WEISER: I'll read those again.  
8 385, 409, 392, 465, 411, 441. All right. So we  
9 are now one for twelve in our list. Let's go for  
10 another six, and then we'll have a chance to  
11 confirm that these others are here.

12                  What I'll say is we'll have to ask --  
13 we'll read these other -- I guess they will be 16.  
14 If people will have to confirm that they're  
15 actually going to want to speak, you know, in the  
16 other slots, so we'll see. All right. Six more.

17                  JOHN FERRELL: Okay. 406, 434, 533,  
18 479, 407, 462.

19                  PHIL WEISER: All right. I will read  
20 this last six, and we'll see if we can get some  
21 company here for you. 406, 434, 533, 479, 407,  
22 462. I see we have attracted two other  
23 individuals.

24                  All right. So we have three  
25 individuals out of eighteen. What we'll do with

1 the other fifteen is we will give them another  
2 chance to approach some of the folks with us, and  
3 if they're able to confirm that they'll want to  
4 speak, we'll give them a chance at the end of the  
5 day. We're going to do one more round now just to  
6 see if we can find some others.

7 JOHN FERRELL: 424, 427, 449, 408,  
8 505, 388.

9 PHIL WEISER: Let me just read that  
10 again. It's 424, 427, 449, 408, 505, 388.

11 UNIDENTIFIED MALE: 408.

12 PHIL WEISER: We have 408. All right.  
13 So we have four individuals who we've selected. We  
14 have about 12 minutes before the first session  
15 starts. Why don't we give you each two minutes or  
16 so to offer -- I think sort of the high level.

17 The question the secretary asked is  
18 kind of the question in all of our minds. What are  
19 the core challenges, concerns, and what are some  
20 solutions and strategies that you all would  
21 recommend? If you would please introduce  
22 yourselves, that would be great.

23 FRED KIRSCHENMANN: Thank you. My  
24 name is Fred Kirschenmann. I operate a 3,500-acre  
25 poultry and livestock farm, organic farm, in North

1 Dakota, and I first of all want to thank the  
2 secretary and everybody else for this rich  
3 conversation this morning.

4 I think one of my concerns that the  
5 secretary touched on but I think perhaps did not  
6 articulate quite as clearly as it needs to be  
7 articulated and that is that there are two sources  
8 of seed stock that we absolutely have to pay  
9 attention to now as we think about the future of  
10 agriculture, and one of those which he alluded to  
11 is the seed stock of farmers.

12 But if you really look at the 2007  
13 census data, the problem is much worse than he  
14 alluded to because we now only have 192,000 farms  
15 that are producing 75 percent of our total  
16 agriculture commodities, and 30 percent of our  
17 farmers now are over age 65, and only 5 percent are  
18 underage 35.

19 And if we don't address that problem,  
20 then we have to begin to figure out how we're going  
21 to have any kind of food security without farmers  
22 because that's -- if these trends continue, that's  
23 what we're going to be faced with.

24 The second seed stock is the seed  
25 itself which farmers are using and producing or

1 feeding, and the problem is that we have lost about  
2 three-fourths of our crop seed stock -- that is the  
3 varieties of seeds that farmers have had  
4 available -- and about 30 percent of our livestock  
5 breeds, and as we move into a more uncertain future  
6 with more uncertain climates, et cetera, we're  
7 going to need more diversity, not less, that are  
8 going to be locally adapted to these local  
9 conditions, so we have to reverse that trend. The  
10 farmers and their seeds, I think, are going to be  
11 critical factors that we have to address.

12 PHIL WEISER: Thank you very much.

13 TODD LEAK: My name is Todd Leak. I  
14 farm 2,000 acres with my brother in central Grand  
15 Forks County, North Dakota. I'm a wheat and  
16 soybean farmer. I'd like to thank the secretary  
17 today for allowing us to have this opportunity to  
18 speak.

19 I'm a soybean farmer for 30 years, and  
20 maybe about a decade ago, I was free to choose from  
21 about a hundred different varieties of nongenome  
22 soybeans. We didn't get genomes in our part of the  
23 farming belt until about 2000. Today there's about  
24 123 varieties of GMO soybeans that I have to choose  
25 from and about 12 non-GMO. Of those 12 non-GMO

1 varieties, 6 of those are for the specialty food  
2 grade total foods sprouting market. I'm not  
3 involved in that anymore.

4           While six of those varieties were --  
5 that remained to me were developed in the 1980s and  
6 1990s and their disease packages, their host  
7 resistance are far less than the GMO varieties, and  
8 their yield is only about 70 percent of the GMO  
9 varieties, and that is not because of the GMOs.  
10 GMOs do not increase yield. There is no yield gene  
11 trait.

12           The issue is that all of the research,  
13 all of the breeding, is going into proprietary  
14 genetically modified varieties of these. I am  
15 therefore forced as a farmer to have to go to the  
16 seed companies, these few seed companies that are  
17 left, to purchase my seed.

18           So it's a combination of the utility  
19 patents and the consolidation of the seed industry  
20 which has entrapped me as a farmer into having to  
21 utilize the GMO seed varieties. And that is what I  
22 think is a problem.

23           The solution, I think, is to return to  
24 the Plant Variety Protection Act as the sole  
25 authority under which the regulation of the seed

1 industry and of variety protection is granted by  
2 the government. Thank you very much.

3 PHIL WEISER: Thank you.

4 PAUL REDDICKER: Paul Reddicker. I  
5 raise about 400 acres of corn in Iowa, northeast  
6 Iowa, and I have about 1,200 cattle we feed out.

7 The last ten years or so, the packers  
8 have really consolidated, JBS being the last one,  
9 and I send a lot of my cattle to JBS right now. I  
10 guess my biggest concern is I do a lot of forward  
11 contracting, and on those contracts, when the  
12 markets are, say, lower than what my contracts are,  
13 they seem to be fussier on the grade of the cattle,  
14 and we rely on USDA graders to keep the packers in  
15 line when they're grading.

16 I think there should be  
17 electronically -- the carcass grades should be  
18 electronically monitored. I think some packers are  
19 starting to do that. I think we should do more of  
20 that because I've had certain loads of cattle where  
21 I've had up to \$2,500 worth of deducts, and then if  
22 the market seems to be a little better than what my  
23 contracts are, all of a sudden, I don't have those  
24 deducts on those cattle. And we take the cattle  
25 out of the same pen, so there's some discrepancy



1     there.

2                   As far as farm size, we all are  
3     farming more acres or more heads of livestock to  
4     make a living. The margins are slimmer as time  
5     goes on. So I guess my biggest thing would be  
6     probably -- since I do feed a fair amount of  
7     cattle, would be to monitor what's actually going  
8     on with those cattle when they get to the  
9     slaughtering as far as keeping the records  
10    straight, whose loads are whose, and that kind of  
11    thing.

12                  PHIL WEISER: Have you submitted a  
13    comment, by the way, developing this point? I  
14    encourage you to do that as well.

15                  PAUL REDDICKER: No, I haven't.

16                  PHIL WEISER: If you could. For  
17    everyone, you know, we're reading all the comments  
18    and particularly where in this case, you know, I  
19    anticipate somebody talking in Colorado, it's great  
20    to get that on the record. So thank you for  
21    raising it now, and I encourage you all to think  
22    about doing that as well. Thank you very much.

23                  PAUL REDDICKER: Okay. How do I do  
24    that comment again?

25                  PHIL WEISER: So for people, the

1 website is [www.usdoj.gov/atr/](http://www.usdoj.gov/atr/) -- Sorry. If you  
2 Google USDA/DOJ workshops or any other search  
3 engine, it will be the first thing that comes up,  
4 so just search for USDA/DOJ or DOJ and USDA  
5 workshops, and you'll find it. There's a way to  
6 give comments.

7 TIM ENNIS: My name is Tim Ennis. I'm  
8 an employee of National Farmers Organization. We  
9 sell organic grain for farmers, primarily five  
10 upper Midwest states. My comments are my own.

11 I think the issue of concentration,  
12 that people in general public have a concept of  
13 what's wrong with a monopoly, a John D. Rockefeller  
14 type of monopoly where one person has sway over the  
15 whole market because of it being monopoly.

16 On the other hand, I think that our  
17 issues all concern a few numbers of buyers in our  
18 monopoly, and I think we need to take a look at  
19 models that others are out there. If someone has a  
20 certain share of the market, they should be treated  
21 as a monopolist because I think that our  
22 agricultural markets are really dominated by the  
23 situations that have been mentioned here on the  
24 percentage.

25 My other comment would be if we take

1 1998 as an example of the last time there were a  
2 lot of independent hog farmers, the prices in 1998  
3 flushed out the last wave of truly independent hog  
4 farmers.

5                   And there have been some comments made  
6 today that that was caused by foreign or exporting  
7 forces. My reading of history is -- and it can be  
8 checked -- that farmers in Denmark at the same time  
9 were receiving \$38 100 weight when \$10 was causing  
10 farmers in the U.S. to be forced out of business,  
11 and I believe that all of those -- most of those  
12 factors were related directly to the issue here  
13 today of concentration, shackle space, and too many  
14 companies that are in the too big to fail category  
15 and not enough choices. Thank you.

16                   PHIL WEISER: Thank you. So I'm just  
17 going to read through the numbers you called, and  
18 if people are here and we can't get you now, we'll  
19 get to you later, but if you're not here, then  
20 we'll go to others later. 424, 427, 449, 408, 505,  
21 388, 406, 434, 533, 479, 407, 462, 383, 390, 396,  
22 485, 391, 386, 385, 409, 392, 465, 411, and 441.  
23 We have one other individual here.

24                   Anyone else from that group who wants  
25 to speak, please come forward, at least a signal

1     that you're still interested.  If not, we'll start  
2     the end of the day with a new group of folks.  Yes.  
3     I take it we have one more individual here.  Great.

4                   FRED BOWER:  I'm Fred Bower, and I  
5     farm in Minnesota.  I'm also a seed dealer.  I've  
6     been a seed dealer for 18 years.  I sell seed for  
7     Garst Seed Company.

8                   What I was going to mention is when I  
9     started farming thirty-four years ago, there were  
10    fifty seed companies.  At the present time there  
11    are four.  We are not being treated properly as far  
12    as price.  When the -- when the amount of seed  
13    dealers goes down, the competition decreases, and  
14    they kind of run of show of what they want to say  
15    is the price.  It was way better to have more seed  
16    companies involved than to have fewer seed  
17    companies at the present time and pay through the  
18    nose for a seed.

19                  PHIL WEISER:  Thank you.  You are  
20    anticipating our panel to follow which will discuss  
21    the issue around seeds, but before that, we have  
22    one more individual?

23                  ELDON McAFEE:  Yes.

24                  PHIL WEISER:  Great.

25                  ELDON McAFEE:  Or do you want me to go

1 now?

2 PHIL WEISER: No, no. Go ahead now,  
3 and we'll start the new batch at 4:30.

4 ELDON McAFEE: All right. My name is  
5 Eldon McAfee. I'm an attorney here in Des Moines,  
6 and I represent the Iowa Pork Producers Association  
7 and other commodities organizations, and just I  
8 think one of the major points that we believe is  
9 being missed here in this discussion mainly  
10 regarding contracts, livestock contracts  
11 specifically, is there's a critical issue as to  
12 what do we mean by contracts? And it's missed by a  
13 lot of people.

14 We have marketing agreements that are  
15 used by those who own the livestock and enter into  
16 agreements for the marketing of that livestock with  
17 packers, processors, et cetera, and then we have  
18 the production contracts. Those are the  
19 contracts -- and to many people this is elementary,  
20 but we think it gets lost in the shuffle. The  
21 production contracts are those where one party owns  
22 the livestock and puts it in someone else's care to  
23 take care of it. And the ownership of the  
24 livestock does not transfer.

25 And there's a lot of discussion about

1 contracts, and then sometimes marketing agreements  
2 get included in that, but the question is, are they  
3 helpful to producers? Is that something that our  
4 producers should be using?

5           And I think the critical issue here is  
6 choices. One of the speakers this morning talked  
7 about choices. And here we need choices for these  
8 producers. All of our farmers need choices. Some  
9 farmers for financial reasons, financial  
10 management, the production contract is the vehicle  
11 to use, and we've seen a lot of farmers benefit  
12 from production contracts. Others who want to own  
13 the livestock themselves may choose to use  
14 marketing agreements or they may choose to market  
15 their livestock without agreements.

16           Again, the key is for financial  
17 management tools to have those choices, and we urge  
18 the USDA, the DOJ, to be careful on how we look at  
19 these tools and make sure any regulation recognizes  
20 the value of these tools to everyone and, again,  
21 the choice whether they use them or not.

22           And I guess I'd like to just end up  
23 with a couple of key points. One, I've seen a lot  
24 of the producers I represent, a lot of individual  
25 producers here in the state of Iowa, and I've seen

1     them when they're done with the production  
2     contract, they originally got the loan to build the  
3     hog building, the cattle yard, et cetera. When  
4     they got that loan, they got the loan because they  
5     are using a production contract.

6                 When that contract is over, I see many  
7     of the clients I work with, they stick with  
8     production contract because it has worked for them  
9     as a financial management tool. Other producers  
10    choose differently.

11                I'd like to just conclude my comments  
12    with a point about the recent contracting  
13    requirements that went into effect under the  
14    federal farm bill, and the point I want to make  
15    here is please, let's be careful how we enforce and  
16    implement some of this because right now, as I  
17    understand it, there is -- I understand what was in  
18    the farm bill, and there's a requirement that a  
19    disclosure be made if you have a production  
20    contract and if there are large capital investments  
21    required.

22                I represent a number of individual  
23    producers, and some of them are being subjected to  
24    Packers and Stockyards enforcement actions for not  
25    having that disclosure in the contract with the

1 contract grower, but the contract doesn't require  
2 large capital investments, but the law is being  
3 interpreted to require the disclosure even if you  
4 don't require the large capital investments. I  
5 think that's absurd, and it's leading to a lot of  
6 confusion out there for producers. Thank you.

7 PHIL WEISER: Thank you for your  
8 comments. So just to remind people our next panel,  
9 please come up. Jim McDonald from USDA is going to  
10 be --

11 DAVID RUNYON: I have 388.

12 PHIL WEISER: 388? All right. Like I  
13 said, we've got time for one more individual before  
14 our next panel.

15 DAVID RUNYON: Thank you. I'm David  
16 Runyon. I farm in Indiana. I want to thank you  
17 for having this opportunity to speak here.

18 I raise corn, wheat, and soybeans  
19 along with two children on my farm. Monsanto  
20 pursued me back in '04 because I had 1 1/2 percent  
21 contamination of their soybean product in my seed.

22 In July of 2004, two investigators  
23 came to my home, and I assumed they were magazine  
24 sales or magazine surveys. Excuse me.  
25 They did not present themselves as being



1 investigators from Monsanto or subcontracted by  
2 same.

3 I gave them some of my information  
4 before I realized they wanted copies of my food  
5 grade contracts. They wanted to know who I was  
6 doing business with. Then I realized something was  
7 going on. I turned around and walked inside my  
8 house.

9 Four days before Thanksgiving of '04,  
10 they came and sent me a Fed Ex letter from St.  
11 Louis giving me seven days to turn over all my  
12 production records. The only problem is I've never  
13 signed a technology agreement nor do I use their  
14 products.

15 Contacted an attorney. I knew I had  
16 to go -- within Indiana we have a farmer protection  
17 law, so I had to go to Ft. Wayne, Indiana, to the  
18 courthouse, and it was best -- federal  
19 courthouse -- it was cheapest for me to find a  
20 criminal attorney within walking distance, so  
21 that's what I did.

22 And he advised me to turn over my seed  
23 receipts, my herbicide receipts, and where I  
24 purchased my seed. We did that. That wasn't  
25 enough. They wanted to search my farm.

1                   Comes along in February of '05 they  
2    send me a letter stating that they have an  
3    agreement with the Indiana Department of  
4    Agriculture to search my farm. Me being on top of  
5    politics realized that was not voted in. We did  
6    not have an Indiana Department of Agriculture until  
7    April of that year.

8                   So my attorney and I decided we'd go  
9    on the offensive side. We asked them three  
10   questions. One is, on what basis were they doing  
11   this investigation? Okay? The next question was I  
12   wanted a copy of that agreement. And also I wanted  
13   to see a procedure manual for sampling my farm of  
14   which they've never responded. They ended whatever  
15   they were doing to me and quit. Okay?

16                  And what I'm saying now is the  
17   liability needs to be placed on the patent holder.  
18   Ms. Johnson was up there, and she was stating that  
19   don't pit farmer against farmer. In my case whom  
20   do I sue but my neighboring farmers? Because they  
21   are taking the liability when they sign that  
22   contract. And that's wrong. That's why it should  
23   go back to patent holder.

24                  We need to revoke these utility  
25   patents because they're just not a good thing for

1     what we're doing here. The future is just  
2     unbelievable. We need -- I need a choice of seed.  
3     I'm down to planting three varieties of public  
4     soybeans. Most of them are coming out of the state  
5     of Ohio. There's no new varieties coming out.  
6     There's no new funding from the federal government  
7     for public variety of beans, yet in Ohio this last  
8     year, the top yielding soybean was a public -- was  
9     a conventional soybean, beat out all of Monsanto's  
10    technology.

11                 People back home -- I have some people  
12    back home that are farmers, seed dealers, and  
13    breeders for companies that are unwilling to  
14    testify because of a fear of intimidation. Right  
15    now as I'm speaking today, Monsanto is out  
16    collecting checks from farmers' kitchen tables.  
17    Okay? And they are signing gag orders, making  
18    farmers sign gag orders, nondisclosure agreements  
19    about these contracts that they're having to settle  
20    out of court for patent infringements or being  
21    accused of it.

22                 PHIL WEISER: Sir, thank you for your  
23    testimony. Like I said, it's timely because this  
24    next panel we're going to have is going to be on  
25    seeds.

1                   And then we're going to have another  
2   panel on broad trends, picking up some of the other  
3   things we've talked about, a short break, and then  
4   we'll go to our enforcer panel, and then at 4:30  
5   we'll pick up with more testimony.

6                   Probably, Jim, if you want to  
7   introduce the panel and turn it over to you.

8                   JAMES MacDONALD: Thank you, Phil.

9                   (Off-the-record discussion.)

10                  JAMES MacDONALD: Good afternoon.

11   Welcome to the panel on dynamics in the seed  
12   sector. My name is James MacDonald. I'm from the  
13   economic research service of the USDA. We have a  
14   panel of very well-informed speakers. I'm going to  
15   introduce them shortly.

16                  The goals of this panel are to have a  
17   discussion. What I'm going to do is introduce some  
18   initial questions to specific speakers to aim the  
19   draw of the discussion towards the set of policy  
20   issues that we're concerned about.

21                  Our goal is to identify those major  
22   issues, to identify areas of disagreement to help  
23   us to further fact-finding. One point I need to  
24   make is we will attempt to take questions from the  
25   audience as well. The way we're going to do that

1 is you can see kids in the FFA jackets down the  
2 hall passing out cards. If you fill out some  
3 questions, pass them back over as we go on, they're  
4 eventually going to get moved up to me, and we'll  
5 aim to fit those in, if we can, in this fairly  
6 short period of time that we have to work with.

7           Let me just walk through some brief  
8 introductions. The gentleman sitting to my left is  
9 Ray Gaesser. Ray is a farmer from Corning, Iowa,  
10 where he produces approximately 6,000 acres of corn  
11 and soybeans. He's been active as a leader on the  
12 Iowa Soybean Promotion Board and the Iowa Soybean  
13 Association and the American Soybean Association.

14           To Ray's left is Neil Harl, the  
15 Curtiss distinguished professor in agriculture at  
16 Iowa State University. Dr. Harl's main areas of  
17 interest include organization of the farm firm,  
18 taxation, estate planning, and legal and economic  
19 aspects of farm finance. What I think I found most  
20 impressive is that Neil has had over 3,300 speaking  
21 appearances in 43 states. Yes, 3,300. I might bet  
22 that puts him ahead of the secretary.

23           Next, Dermot Hayes is a professor of  
24 economics and finance at Iowa State, leads the  
25 policy task force at the Plant and Science

1 Institute at Iowa State. Neil (sic) and his wife  
2 farm 900 acres of corn, soybeans, and cattle.

3 Next is Diana Moss. Diana is the vice  
4 president and senior fellow of the American  
5 Antitrust Institute, an economist. Diana has  
6 managed projects for AAI including antitrust  
7 mergers and acquisitions, regulatory reform,  
8 network access across a wide range of industries  
9 including transgenic seeds.

10 At the end of the table, Jim Tobin is  
11 vice president for industry affairs at Monsanto  
12 where he served in various agricultural marketing  
13 and commercial development positions since joining  
14 the firm in 1983. Prior to joining Monsanto, Jim  
15 was a member of the agricultural extension service  
16 in Iowa. He's a member of the board of delegates  
17 in the U.S. Grain Council, has served on the  
18 National 4-H Council and is the past chairman of  
19 the American Seed Trade Association.

20 Okay. What I'm going to try to do is  
21 cover three broad areas. We're going to start with  
22 a discussion focused on how we got where we are  
23 today. What are the driving forces that has driven  
24 the seed industry to its current structure?

25 Second broad area of questions are

1 going to involve current status of competition in  
2 the industry. And the third set of questions for  
3 which we hope to hold the most time, the last half  
4 hour of the session, is going to focus on the  
5 future and future -- and merging policy issues as  
6 we enter a world into which some seeds are going  
7 off patent.

8                   Let me start with historic  
9 development. My quick summary of how we would  
10 think about the seed industry today, which many  
11 people have touched on already, is we have a small  
12 number of major firms that develop traits, sell  
13 those traits through their own seeds, and also  
14 license those traits to independent seed companies.  
15 We have a declining number of those independent  
16 seed companies.

17                   In addition, we have substantial  
18 increases in private research and development  
19 spending but decline certainly in real terms in  
20 public research and development on the crop  
21 science.

22                   I'd like to direct my first question  
23 to Neil Harl and let him take a shot at summarizing  
24 why we've seen that type of major shift in the last  
25 20 years to the type of structure we see today.

1                   NEIL HARL: Thank you very much. Are  
2 we on?

3                   JAMES MacDONALD: We're on.

4                   NEIL HARL: We're on. Actually, it's  
5 going to require more than 20 years. As I pondered  
6 this over the last several days, I concluded that  
7 really we needed to divide our past into three  
8 eras, and focus on A, technology and B, control and  
9 how those have changed over the time period, and  
10 I'm going to emphasize the control side more than I  
11 am the technology side because most of you are  
12 fully aware of that.

13                   So I'm going to have just a few  
14 comments about the open pollinated era, partly  
15 through nostalgia, and critically the area of  
16 hybrids from conventional breeding and third, the  
17 biotech era. There were three major legal  
18 developments during that time frame. And I can say  
19 with some confidence I don't believe we handled the  
20 third one very well as a matter of public policy.  
21 And it didn't come through Congress. It came from  
22 the Supreme Court.

23                   Now, as we ponder this task, the open  
24 pollinated era continued until the '30s, and I can  
25 tell you that as it came to its end, it was an



1 interesting experience. At age three in February  
2 of 1937, I was assigned the task by my father of  
3 budding and tipping ears, shelling the irregular  
4 kernels off because they didn't go through the  
5 planter plates well, and I had the whole month of  
6 February to do it, and I used the whole month of  
7 February. That was my dad's seed for the 1937 year  
8 in the last year he planted open pollinated because  
9 he noticed two of his neighbors had some hybrid  
10 seed, and while he had been preaching to me for  
11 quite some time, he can't afford to pay the price,  
12 the outrageous price they pay and require for  
13 hybrid seed, which was a few dollars a bag, but  
14 after he saw the yields, he was convinced that that  
15 was a good idea.

16                   And so moved into the next era. But  
17 that era, the technology was simple, although labor  
18 intensive. The farmer had total control over the  
19 ears, the seed, and the crop, but that was balanced  
20 against, of course, the fact that the yields were  
21 not as great as the hybrids were.

22                   The era of hybrids was assisted by the  
23 land grant universities, and many of you know the  
24 land grant universities essentially provided the  
25 inbred lines throughout the period from the onset

1 of the hybrid period until at least the mid- to  
2 late 1970s, and we'll talk about that transition in  
3 just a moment.

4 Now, neither the land grant  
5 universities nor the seed companies retained any  
6 control or ownership over the seed or its genetic  
7 makeup until at least 1970. There had been a piece  
8 of legislation passed in 1930, the Plant Patent  
9 Act, but the Plant Patent Act was very narrow. It  
10 only applied to asexually reproduced plants. So it  
11 was really horticulture, and most of our farm-type  
12 seeds did not qualify for protection, intellectual  
13 property protection, under the Plant Variety  
14 Protection Act.

15 But we need to watch this because as  
16 we get to the end of the patent period, we're  
17 concerned about the existence of patent rights, but  
18 we're also concerned about the existence of PVPA  
19 rights as well, and those can lurk where you don't  
20 necessarily have a patent right. So we want to  
21 emphasize that point.

22 The producers still had complete  
23 control over the seed and over the crop through  
24 this period of conventional crop breeding. The  
25 universities, generally the land grant, generally

1 provided at little cost, in some cases at no cost,  
2 to the seed companies, and then they would complete  
3 the hybridization process.

4           During this period the attitude was  
5 fairly widespread that seed was considered to be in  
6 the public domain. As a matter of fact, I remember  
7 in some degree of involvement and a couple of  
8 instances where veteran seedsmen -- they called  
9 themselves seedsmen. There were women involved,  
10 but they never did get around to calling it  
11 seedswomen, but the seedsmen believed, many of  
12 them, that seed was in the public domain, and in  
13 one case one seedsman grabbed a fist full of seed  
14 from the wagon of a competitor. In another case a  
15 seedsman went on a midnight foray into the fields  
16 of a competitor and harvested a few ears. Didn't  
17 think anything was wrong with that. That was the  
18 attitude, the attitude until we got to the end of  
19 that period, the beginning of the biotech era.

20           Now, coincident with the beginning of  
21 laboratory manipulations, rather than field -- the  
22 type of conventional crop breeding that had been  
23 going on, there was a scramble for germplasm  
24 because the Supreme Court, the Supreme Court in  
25 1980, decided a key case that allowed the patenting

1 of life-forms for the first time.

2 Now, just a little bit of detail here  
3 because the literature is not exactly clear on this  
4 point. Some think the Supreme Court reversed the  
5 patent examiner. Actually, the patent examiner had  
6 said no, you can't patent life-forms. And the  
7 Board of Patent Appeals agreed. The next level up,  
8 the third level up, said "Well, we think that we  
9 have to reverse that because times are changing,"  
10 and it was that opinion that was affirmed by the  
11 U.S. Supreme Court by a five-to-four decision.  
12 Congress was not involved.

13 And moving into the patenting of  
14 life-forms was a new area for patenting, and we  
15 continued to have problems because at no point did  
16 Congress exercise any kind of oversight over that  
17 patenting process.

18 So that was followed in the 1990s by  
19 an almost frenetic move to acquire firms, and the  
20 number of seed producers dropped from about 300  
21 plus to the handful that we have today, those that  
22 were large enough to muster capital for genetic  
23 manipulation through laboratory operations and to  
24 buy out competitors without much fear of a  
25 challenge from Washington, DOJ or FTC.

1                   Now, the discovery and development of  
2   Roundup Ready, which was patented, coupled with the  
3   use of restrictive licensing gave the company  
4   unprecedented influence over even seeds sold by  
5   competitors through the use of restrictive  
6   licensing arrangements and incentives, economic  
7   incentives.

8                   The high demand for seeds and  
9   technology assured the competitors would agree to  
10   the terms of the licensing agreements. The terms  
11   and the use of incentives permitted the patentee to  
12   continue the expand of control.

13                  So what we have is the transformation  
14   of the seed business in that 80-year period, almost  
15   unbelievable in nature and in scope. No one in  
16   1930 would have been able to forecast what happened  
17   and then been terribly surprised if they'd seen it.

18                  But I think our problems as we look  
19   backward is that there was not sufficient oversight  
20   over the various key developments during that  
21   period, notably the decision to move toward  
22   patenting of life-forms.

23                  And it isn't just agriculture that's  
24   having problems. Medical research is also having  
25   problems with respect to the patenting of

1 life-forms because you can stake out a segment of  
2 germplasm and keep others from being involved with  
3 it.

4 So in very short order -- I think  
5 that's more than my three minutes -- there are some  
6 other issues that I want to talk about later on if  
7 we have the opportunity.

8 The big problem today, in my view, is  
9 what happens at the expiration of patents? What is  
10 it going to take to have a generic market? And  
11 we'll, I think, be addressing that later on. I see  
12 this as the next big obstacle.

13 I hope when we deal with this one, it  
14 will be with a greater degree of insight and  
15 possibly the Congress involved so that like the  
16 1970 act, it represents a refereed conclusion based  
17 on the various interests that have a stake in this  
18 process. Now, I think that's --

19 JAMES MacDONALD: Neil, if you want to  
20 speak about that, we'll bring you back in that last  
21 session. You're using up all of your time.

22 NEIL HARL: All right. Fine. Thank  
23 you. Thank you.

24 JAMES MacDONALD: Let me -- key thing  
25 we've identified and that people have spoken about

1 so far has been introduction of intellectual  
2 property protection, particularly starting in the  
3 famous 1980 Supreme Court decision.

4 Let's talk a little bit about the  
5 outcomes from that up till now, and what I want to  
6 do is ask Jim Tobin and then from him get some  
7 discussion about how has that expanded patent  
8 protection affected investment decisions in the  
9 seed industry?

10 JIM TOBIN: Jim, thank you. It's a  
11 pleasure to be here. I grew up on a farm in  
12 southwest Iowa not far from here. My parents are  
13 here. They're still farming near New Market. I  
14 used to wear one of the blue jackets for New  
15 Market. It's now consolidated into Villisca and  
16 Bedford and Clarinda, so I'm appreciative of them  
17 being here today or this afternoon.

18 What has intellectual property meant  
19 to the industry? Let's start with it's attracted a  
20 great deal of innovation, new investors, new  
21 dollars, new opportunities for farmers to choose to  
22 use products that help them make money.

23 Around the grading trade, which I'm  
24 sure Ray can talk to, for our family farm, it took  
25 away the need to walk the beans every summer, saved

1 a couple weeks time. It helped my dad who does no  
2 till farming grow soybeans in a sustainable way and  
3 save the soil and made a tremendous difference for  
4 farmers.

5 I'm sure many of you remember you  
6 could drive down the road and see which farms were  
7 using the Roundup Ready technology because they had  
8 the cleanest fields. That's just the first step.

9 Today there are 23 different biotech  
10 traits that are available to farmers in corn,  
11 cotton, and soybeans, and more importantly, because  
12 companies have seen this work, the opportunity to  
13 get paid for these new innovations, as farmers have  
14 chosen to use them, the pipeline is really full.  
15 If you look at the corn and soy opportunities that  
16 are coming, not just to one company but from many  
17 companies, there are fifty different traits in that  
18 pipeline that are listed as being worked on for the  
19 next ten years.

20 Those traits get broadly licensed to  
21 over 200 seed companies that let farmers decide  
22 what they want to use. It was very important that  
23 early on we recognized that you have to put the  
24 very best germplasm with these traits or farmers  
25 won't buy them, and that's why there's such a



1 connection to the seed industry because that's the  
2 delivery vehicle.

3 It's an exciting time. There's a lot  
4 of choice today. There's going to be a lot more  
5 choice in the future, and there's tremendous  
6 competition for the farmers' business.

7 JAMES MacDONALD: Thanks, Jim. We're  
8 going to get a little bit of -- seek the panel for  
9 a little bit of reaction in a moment, but I want to  
10 get one more point in on this introductory topic,  
11 and I'd like to get Ray Gaesser to speak about his  
12 experience. How has farming changed on his  
13 operation as a result of having these seeds?

14 RAY GAESSER: Thank you. And it's  
15 really an honor to be here, as everyone else has  
16 mentioned. Thank you, Mr. Secretary and others,  
17 for allowing this to happen.

18 I'm a farmer with a family business.  
19 My wife and I have been farming in Iowa for  
20 32 years, and now I'm proud to say that our son has  
21 joined our operation, and we're really happy for  
22 that. And we've used technology over the years to  
23 do a better job of farming, to help our friends and  
24 our neighbors.

25 We partner with our neighbors actually

1 in helping them and us to pull together our  
2 resources and maybe buy seeds in a volume, and that  
3 gives us a discount and allows us to be competitive  
4 in the rural market.

5 I can't tell you how nervous I was the  
6 first time I sprayed Roundup on my soybeans about  
7 1996. I think a lot of you out here had that same  
8 feeling. We planted the soybeans a month or so  
9 later. You know, they were about this high. And  
10 they looked beautiful.

11 And here I'm putting Roundup in a tank  
12 that I'm used to not doing and spraying it over the  
13 top of my soybeans, and I'll tell you that I  
14 watched that crop every day for a week. It was  
15 right by the road, of course, and so were my  
16 neighbors, but you know what? The technology  
17 worked, and it transformed me, and it transformed  
18 the agriculture in the United States, and so  
19 technology has been very helpful for us.

20 And we need to be careful what we do  
21 that we have the use of technology and that we  
22 don't -- don't stifle innovation, but at the same  
23 time with that innovation and with that market  
24 share, we have a responsibility. We have  
25 responsibilities that at the end of the patent that

1 farmers and consumers can benefit from that patent  
2 and that we have the generic market that we can  
3 save money on our seeds that we plant, that we need  
4 to know that those seeds are registered around the  
5 world, and I think that's one of the big concerns  
6 that we have, is the registration process. It's  
7 the process of moving through patent expiration,  
8 and I hope that's an important subject here today.

9 JAMES MacDONALD: Thanks. I have to  
10 be the tough guy on time, which is why I cut people  
11 off driving. We got about two minutes left on this  
12 initial issue of how the policy changes,  
13 particularly regarding patenting, have affected  
14 investments and farming decisions in the industry.  
15 Have any other reactions from the panel on what's  
16 been said so far?

17 Okay. Let me move on. Let's talk a  
18 little bit about current state of the competition  
19 in seeds. I'll direct it straight to Diana Moss.  
20 How should I think about structure? Is this a  
21 highly concentrated industry?

22 DIANA MOSS: Am I on?

23 JAMES MacDONALD: You're on.

24 DIANA MOSS: Yes. So first of all,  
25 thank you very much for the opportunity to be here.

1 It's an honor, and I've learned so much so far  
2 today listening to these different perspectives.

3 Jim has asked me to talk a little bit  
4 about the structure of the markets that are  
5 important here, and I think one thing to put out  
6 there initially is to think about what these seed  
7 platforms look like, and a platform or a system as  
8 we think of them in antitrust economics and law  
9 consists of multiple markets, so you have upstream  
10 markets, in this case the market for traits, and  
11 you have a market below that, or downstream market,  
12 for traited seed.

13 There's obviously -- there are levels  
14 in between. Germplasm could be considered  
15 separately, depends who you talk to, but the point  
16 is these markets form platforms, and we have an  
17 increasing degree a vertical integration between  
18 trait developers and seed companies, and the number  
19 of independent seed companies which have heretofore  
20 been a very important channel getting to the farmer  
21 have decreased dramatically in size over time, and  
22 that's an important thing.

23 So when we look at these seed  
24 platforms, we look at traits markets. We look at  
25 traiting seeds. Really the question for us is,

1     what are the alternatives? So good antitrust  
2     analysis always pursues the questions from the  
3     consumer's perspective. What are the alternatives?  
4     So what alternatives are there amongst traits for  
5     herbicide tolerance and insect resistance? What  
6     alternatives are there for seeds, for traited  
7     seeds?

8                     So if you ask the question in that  
9     way, I think it gets you to a very important place,  
10    and that is if you look upstream at traits markets,  
11    they are very, very highly concentrated. There is  
12    in effect a monopolist in the market for traits,  
13    and that is Monsanto. It's an inescapable fact.

14                    What I am saying says nothing about  
15    the value of innovation. We think innovation is  
16    important. We think the patent laws in the United  
17    States are important in promoting innovation. If  
18    we didn't have them, we probably wouldn't have the  
19    type of risk-taking behavior that we do that  
20    provides new products, so innovation is important.

21                    The question moving forward is, how  
22    concentrated are those markets? Well, they're very  
23    concentrated. And are there alternatives available  
24    in those markets? And I think the answer is -- and  
25    this has been the source of much of the

1 controversy -- there aren't many alternatives  
2 upstream. All right?

3 Now, if we look downstream, what we  
4 see are markets for traited seed, so Monsanto has  
5 broadly licensed its technology. I think that's  
6 probably at its core a very good thing. We will  
7 get into questions about how that technology has  
8 been licensed and whether it actually promotes or  
9 frustrates competition.

10 But I think what's deceptive about the  
11 downstream traited seed markets is they give the  
12 illusion of choice. There are lots of brands.  
13 There are lots of varieties. And that's all good.  
14 But if you connect the two markets, that's where we  
15 start asking some really hard questions.

16 And the good analogy is looking at  
17 your computer. If you look at your computer, what  
18 do you see? You see one operating system. You can  
19 buy a Dell. You can buy an IBM. You can buy a  
20 Compaq. You can buy a Sony. But when you turn the  
21 thing on, there's one operating system. And the  
22 analogy is very good on the seed side.

23 Similarly, you can turn on your  
24 computer and see what makes it work, and that's a  
25 microprocessor chip. Well, who's out there

1 providing microprocessor chips? There's Intel who  
2 has about an 80 percent market share, and then  
3 there's AMD which has fought very hard for many  
4 years to get a foothold in that market.

5               So the point here is that we have two  
6 markets. The upstream markets for traits is very  
7 highly concentrated. It's essentially monopolized  
8 by a single firm. The downstream market has more  
9 competition, but it's still very highly  
10 concentrated.

11              Some of the cause of concentration  
12 obviously are mergers over time, both vertical  
13 mergers which link together these two markets, but  
14 also the acquisition of successive seed companies  
15 over time has created concentration downstream.  
16 All right?

17              There are incentives once you have a  
18 monopoly to extend your monopoly or to maintain  
19 your monopoly, and I think that very question is  
20 what we're trying to get at today in some of this  
21 public discussion.

22              Effects of concentration? Obviously  
23 less choice. Less choice for seed companies  
24 seeking to create new products, less choice for  
25 farmers who want to shop around and access other

1 products.

2 Another result of less competition in  
3 concentration are higher prices. We've seen --  
4 Dermot is going to talk about higher prices here in  
5 just a moment. That's a grave concern, really  
6 grave concern, I think.

7 And we have to separate the high price  
8 argument, I think, from the argument that, well,  
9 higher prices are okay because farmers have so much  
10 more productivity. I think the two have to be  
11 separated to have a really frank discussion about  
12 the effects of concentration and price.

13 The effects of concentration also  
14 affect innovation. There's a connection between  
15 competition and innovation. We generally get more  
16 innovation if there's competition as opposed to  
17 having one firm dominate and control the process.

18 And finally, later on we'll talk about  
19 what to do. And I think that will enter into the  
20 discussion about generics. Thank you.

21 JAMES MacDONALD: Let me just remind  
22 our panel that we need to speak into the  
23 microphones so they can hear us a little bit better  
24 in the back, so pull the microphone closer to  
25 yourself.



1                   Any reactions off the panel on Diana's  
2   discussion of concentration?

3                   JIM TOBIN:  If I could, Jim, I'd like  
4   to --

5                   JAMES MacDONALD:  Go ahead.

6                   JIM TOBIN:  I've read your paper, and  
7   I appreciate that people feel very strongly about  
8   this.  I'd like to start by saying that the  
9   operating system model is not a good analogy for  
10  the seed business, and let me tell you why.

11                   If you want to grow soybeans, you  
12  don't need Roundup Ready to make the soybeans grow.  
13  They grow just fine.  There are people who grow  
14  conventional soybeans -- and Ray can speak to  
15  this -- who do just fine.

16                   It's because farmers choose to use a  
17  herbicide-tolerant trait that they ask the seed  
18  company to have that for them, and they decide  
19  every year what they're going to plant.

20                   Let's go back to the early days of '96  
21  when Roundup Ready first came to the market.  There  
22  was another trait called STS that was developed by  
23  DuPont, was available at the same time, both --  
24  some of you probably planted that.

25                   Every year farmers get to decide, for

1     example, do you want to use Roundup Ready, do you  
2     want to use STS, or would you like to use  
3     conventional? There are weed control systems to  
4     handle each one of those. There are a number of  
5     choices. Farmers decide.

6                 Yes, we broadly license our Roundup  
7     Ready trait, but that's a good thing. We allowed a  
8     broad group of companies in the industry -- and I  
9     helped in the early works on that. People really  
10    liked the idea that they could get these traits in  
11    any brand of seed that they wanted. It's worked  
12    well for farmers. It's worked well for Monsanto.

13                Today there's another new trait called  
14    Liberty Link that's just been launched by Bayer, so  
15    innovation continues. I told you earlier that  
16    there's 50 new traits in the pipeline for corn,  
17    soy, and cotton, and that, I think, is really good  
18    evidence that others look at this market and say  
19    "There is an opportunity, and I want to invest in  
20    it."

21                So there is value. Farmers make  
22    decisions. They're very, very good at making those  
23    decisions, and that's why we have high market share  
24    with Roundup Ready in soybeans. It's not because  
25    you have to have Roundup Ready as an operating

1     system to make the soybean variety yield and grow  
2     on the farm.

3                   JAMES MacDONALD:  Let me quickly bring  
4     in one point Jim touched on and several members of  
5     the audience touched on.  Access to conventional  
6     seeds.  About 85 percent of corn acres is biotech  
7     varieties now; 91, 92 percent of soybean acreage  
8     according to USDA statistics.

9                   I want to direct a quick focus  
10    question to Ray and ask him to address the question  
11    of do we have sufficient access and sufficient  
12    plant breeding programs for non-GMO seeds?

13                  RAY GAESSER:  Well, I guess I would  
14    have to admit that the plant breeding to  
15    conventional seeds has gone down as a percent, but  
16    everyone I've talked to, especially in soybeans  
17    around the country, there is access to conventional  
18    seeds in our local -- used to be a co-op, and now  
19    it's another company owns that but that we have a  
20    really good market for conventional soybeans there  
21    with a \$2 premium per bushel for farmers who choose  
22    to grow them.

23                  We have the Asoya group that we talked  
24    about this morning that had their own conventional  
25    varieties and were successful for a while but found

1     that consumers weren't willing to pay, and I guess  
2     we don't understand that exactly. We're trying to  
3     offer things that the consumer wants, but maybe  
4     they're not always willing to pay the premium.

5                     At Iowa State University here,  
6     Dr. Walt Fehr, the check-off, the Iowa check-off  
7     and the national check-off, funds that program  
8     greatly, and I'll tell you that Dr. Fehr is almost  
9     a god in Japan because of the food grade soybeans  
10    that he grows there.

11                    So there is opportunities. It is  
12    somewhat limited, but in relation to the 8 percent  
13    or so of the total demand for soybeans, it's  
14    probably not too far out of line. There is  
15    availability.

16                    JAMES MacDONALD: Any reactions on  
17    that anybody else on the panel want to offer on  
18    that? Let me get to pricing. Spend a little time  
19    on this.

20                    I'm going to direct a question to  
21    Dermot Hayes. Again, according to other USDA  
22    statistics, average prices for biotech soybean  
23    seeds rose by a little over 60 percent between 2004  
24    and 2009, according to our numbers. Average prices  
25    for biotech corn rose by about 93 percent in that

1 same period.

2 Dermot, do you have some analysis of  
3 why we might be seeing those increases? What do  
4 you think is going on?

5 DERMOT HAYES: Sure. I better  
6 apologize to everybody. I've got a funny accent.  
7 I grew up in Ireland, and I moved here in '81.  
8 Still haven't managed to get rid of the accent.

9 I farm a little bit with my wife, and  
10 last spring we went into Sam's Club and saw corn,  
11 non-GMO corn, for 100 bucks a unit or about  
12 40 bucks an acre, but we chose to spend about a  
13 hundred dollars an acre or 250 for the seed we  
14 bought, and that's because the seed companies are  
15 packing in so much more into that bag, and  
16 apparently a lot of other farmers made the same  
17 decision we did because the average price of seed  
18 is closer to the high end rather than the low end  
19 that was available to us, and that's because they  
20 could -- it cuts our herbicide bill and our  
21 pesticide bill, and we get a yield boost relative  
22 to the seed we could have bought for 100 bucks that  
23 was -- that was five or six years old. So that's  
24 the answer.

25 But there's a more interesting

1 question, and that is the U.S. has been running a  
2 great natural experiment. We have strong IP for  
3 corn, and we have a very weak IP for wheat. The  
4 strong IP has attracted innovation, and corn yields  
5 are going up, and despite a bad summer last year,  
6 we had record yields.

7           Wheat yields are flat and have been  
8 flat for quite a while. I went back to the year I  
9 came to this country, '81, and we had more wheat  
10 acres than corn acres. There's been a net transfer  
11 now from wheat to corn with 10 million more acres  
12 of corn than wheat. Used to be corn produced about  
13 three times more volume than wheat. Now corn  
14 produces six times more volume than wheat because  
15 it attracted acres, and the yields have grown so  
16 much faster.

17           So let's think about that Kansas wheat  
18 farmer. Former Kansas wheat farmer is now growing  
19 corn. Are they getting results from foreign  
20 companies? Well, why did they grow corn? Why did  
21 they switch from wheat? Are we in the public  
22 sector doing a good job of getting new products to  
23 market? We probably are but not as good as the  
24 private sector.

25           So I would argue that the natural

1 experiment would favor what's going on with corn,  
2 and the benefits have grown. Higher yields benefit  
3 the consumers.

4 JAMES MacDONALD: Anybody else want to  
5 give an analysis on prices?

6 RAY GAESSER: One other comment. I  
7 just read an article a couple of days ago, the  
8 University of Missouri's yield trials. In 2000  
9 about 30 percent was conventional varieties. 2006  
10 it was only 1 percent. But last year it was back  
11 up to 15 percent, so we are seeing some -- maybe  
12 some demand or some more interest in conventional  
13 varieties, and I think there's a place for every  
14 one of us in this market.

15 JAMES MacDONALD: This gives us --  
16 we've got a fair amount of time left. That's good  
17 for talking about the stuff that's really powerful  
18 now and where we have a series of major policy  
19 issues emerging facing several departments, the  
20 government as well as industry.

21 The Roundup soybean trait goes off  
22 patent in the crop year for 2015. In the years  
23 after that, several other traits are going to go  
24 off patent. We have what in essence is going to be  
25 another brave new world of how we handle policy for

1 these things. We have a set of issues we want to  
2 cover.

3 I want to start off by directing a  
4 question back to Ray and asking about in this  
5 world, it appears I keep hearing from farmers that  
6 things are highly uncertain, and they don't like  
7 uncertainty, making long runs of planting and crop  
8 planting decisions, and I'd like Ray to address the  
9 issue of where this uncertainty arises and what he  
10 and his colleagues feel are needed for better  
11 clarity and transparency in the process, so Ray is  
12 going to start us off.

13 RAY GAESSER: Thanks a lot, and our  
14 groups at the Iowa Soybean Association and American  
15 Soybean Association, we've spent a lot of time  
16 talking to everyone in the industry from large tech  
17 providers to small seed companies to the  
18 universities, and we find that at the top of the  
19 pile, it really comes to be the uncertainty in the  
20 market, the uncertainty in license agreements, the  
21 uncertainty in the breeder's ability to continue to  
22 use Roundup Ready lines particularly but also, you  
23 know, how they will be able to use the Roundup  
24 Ready to patent.

25 We're also concerned about future



1 traits in registrations, whether it's registrations  
2 for the Roundup Ready 1. Will it continue around  
3 the world? Who will be in charge of that? I think  
4 that's the really big issue there but future  
5 traits.

6 And again, small companies actually  
7 register a product. Costs \$100 million to register  
8 a product around the world, and that's part of our  
9 competitive issue here. Small companies aren't  
10 able to access that market, and we need to find a  
11 way to help them through the system.

12 JAMES MacDONALD: Ray, let me just  
13 bring us a little bit further along. Ray has  
14 identified a big issue is registration. What I  
15 want to do is take a little bit of time, a  
16 significant amount of time, to talk about that.

17 I want to ask Jim Tobin to tell us  
18 just a little bit about what exactly has been  
19 involved in registration since it's a major  
20 function of what Monsanto has been doing. It's  
21 something we need to think about when we go to  
22 generic seeds.

23 JIM TOBIN: Yes. For the registration  
24 people in the crowd, I'm going to really summarize  
25 quickly, but when we register a product like the

1 Roundup Ready trait that Ray is talking about, we  
2 received approval from the USDA, from FDA, and from  
3 EPA, and each of them have a separate role to play  
4 in the United States.

5 In the case of Roundup Ready, you get  
6 deregulation in that process, and so there's no new  
7 regulation work that has to be done for Roundup  
8 Ready in soybeans. That's done. And when you go  
9 around the world, Ray and his colleagues exported a  
10 big part of their crop. It's a really important  
11 part of their business. And so we register with  
12 more than 40 countries around the world where  
13 soybean or soybean products are sent.

14 About 27 of those countries represent  
15 the European Union, and they're supposed to work  
16 all together, but that doesn't always work quite  
17 that way. We have to do a lot of things to make  
18 sure that we have that in place.

19 There's seven countries that will  
20 require either a renewal or a new registration over  
21 a period of time, maybe three years, five years,  
22 ten years.

23 What's in a registration package?  
24 Well, if you stacked up the reports, there's about  
25 50 reports that are about a foot and a half high.

1 The work is done by company scientists who are  
2 developing the product, and we also hire  
3 third-party experts to come in and help do  
4 regulatory work.

5           You're looking at safety for food and  
6 human consumption -- for food consumption and feed  
7 use. You're also looking to ensure that the  
8 product is effective. You're looking to ensure  
9 that the soybean plant isn't changed in any way if  
10 that's a claim that you're making, which is the  
11 case here.

12           That work is very involved. It  
13 doesn't cost \$100 million. What Ray was quoting is  
14 the cost of bringing a new trait all the way from  
15 the beginning step through regulatory approval. It  
16 is expensive but it's not quite that expensive.  
17 But that is what we invest in the whole process of  
18 eight to ten years.

19           So the question then is, with these  
20 regulatory approvals, what do you do when something  
21 goes off patent? Let me just address that quickly.  
22 Monsanto's patent will end with the planting of the  
23 2014 crop, so in 2015, we'll no longer have a  
24 patent on the Roundup Ready trait.

25           If someone licenses from us, a seed

1 company or you as a farmer, we won't collect  
2 anything. We won't be owed any royalty. Our work  
3 will be done relative to the licensing and getting  
4 paid a royalty. However, because when a farmer  
5 produces a crop, you want to make sure it has a  
6 market, we've worked closely with Ray and others at  
7 the American Soybean Association. We've committed  
8 that we'll maintain this regulatory package, the  
9 renewals that are needed in these countries around  
10 the world, for a period of at least three years  
11 after the patent goes off, so until the end of  
12 2017.

13 Now, of course, Ray is concerned  
14 because he's going to possibly be using some of  
15 this material on patent, and he wants to make sure  
16 there's a market. What we're proposing, and we're  
17 willing to have a lot of people at the table for  
18 this, we think that whoever wants to use it,  
19 whatever seed company or developer that wants to  
20 use the Roundup Ready trait off patent, we've put a  
21 proposal together and provided it to the  
22 bioindustry organization where trait developers  
23 work on stewardship policies and said "If you want  
24 to use this, we'll make it available. If you can  
25 pay the cost of the registration, share that cost,

1 we'll continue that as long as you want us to do  
2 it." Our data packages would be available. It's  
3 about 1 to \$2 million a year to maintain this, so  
4 we would welcome anybody in the industry that wants  
5 to get involved in helping find the solution.

6 We think an industry approach is an  
7 appropriate way to go, but we're open to a lot of  
8 ideas and approaches to make sure that the farmers  
9 want to use this. The breeders want to breed with  
10 it. It will be available, and there won't be any  
11 challenges with regulatory, and Ray, you have my  
12 commitment and the commitment of my company that  
13 we'll make sure that these regulatory approvals are  
14 in place so that you can export your soybeans.

15 JAMES MacDONALD: Let me move this  
16 discussion of the registration process along a  
17 little bit. And I want to ask Diana for her view  
18 on whether we need new rules or agreements aimed at  
19 improving that process.

20 DIANA MOSS: Great. Thanks for that.  
21 If I could just back up for 30 seconds and maybe  
22 put a different -- a slightly different perspective  
23 on this, when Roundup Ready 1 went off patent, this  
24 will be the first opportunity to have competition  
25 in biotechnology seed, and that's a big thing.

1                   There has been proprietary technology.

2   Again, that's attributable to our patent laws in  
3   the U.S. That's good. It promotes innovation.  
4   But once the patent expires, that is the -- that's  
5   when the window starts to open.

6                   I would argue the window opens long  
7   before that, in part because the pipelines take a  
8   number of years to populate with potential new  
9   products. That means that rivals, rival biotech  
10   developers in this world of stacked trait products,  
11   need to get access long before the patent expires  
12   to be able to seamlessly transition and have those  
13   products ready for market by the time Roundup Ready  
14   is off patent.

15                  So there's potentially a gap here  
16   where if we do not construct the right set of  
17   policies and conditions and to smooth this  
18   transition, all of this generic competition is in  
19   jeopardy, and the people who suffer from that are  
20   not only rivals in the industry but the seed  
21   companies and the ultimate consumers.

22                  We all deserve to benefit from generic  
23   competition just like we have in pharmaceuticals,  
24   and you all remember paying really big prices for  
25   some of these branded pharmaceuticals that now you

1     pay literally pennies for.

2                     So I would view this process as really  
3     a two-part process. One is to work with the patent  
4     holder, and Monsanto has stepped forward in a very  
5     positive, constructive way. I do not think that  
6     those commitments go far enough. I think there has  
7     to be more work done on making data available. I  
8     think there needs to be an extension of the  
9     registration process in excess of three years.  
10    There have to be commitments not to sue for patent  
11    infringement if rival biotech developers want to  
12    get R&D programs going. All right?

13                    Antistacking provisions have been  
14    problematic to date and could easily, easily gut  
15    the whole transition to generic biotech seed. And  
16    I think it's really important to note that unless  
17    this whole process is constructed smoothly and in a  
18    way that promotes efficiency, what is sold outside  
19    the United States will have a direct impact on  
20    sales in the U.S., and we all know that. Unless  
21    you get your registrations, unless the process is  
22    nicely dovetailed, what you expect to sell overseas  
23    can impact what you sell inside the United States.

24                    I don't think a legislative solution  
25    is going to work fast enough. A Hatch-Waxman type

1 of approach that we saw on the generic  
2 pharmaceutical side, I think, is unwieldy. It may  
3 be a longer-term solution.

4 JAMES MacDONALD: Let me break in  
5 right on that, not to stop you --

6 DIANA MOSS: Sorry.

7 JAMES MacDONALD: -- but to ask you if  
8 you'll expand a little and tell people what you  
9 mean by a Hatch-Waxman process.

10 DIANA MOSS: The Hatch-Waxman Act --  
11 I'm no expert on Hatch-Waxman, but the point to  
12 make is that Hatch-Waxman put into place certain  
13 rules and regulations that enabled the promotion of  
14 generic pharmaceuticals before they went off  
15 patent. It enabled generic drug manufacturers to  
16 work within some windows to bring these new  
17 products to market by engaging in the research and  
18 development.

19 And there are obviously many details  
20 to be worked out. I think the devil is in the  
21 details, but it really consists of a two-part  
22 process: working with Monsanto and developing the  
23 institutions to promote this. I would even suggest  
24 a generic biotech seed organization, much like the  
25 generic pharmaceutical association. You get on



1 their website. They've got a whole set of policy  
2 issues that can be nicely juxtaposed on what's  
3 going on in biotech seed. So I think it's really a  
4 two-pronged issue.

5 JAMES MacDONALD: I think Diana has  
6 touched on the entire -- well, not the entire.  
7 Diana has touched on the set of issues that we want  
8 to cover. I'm going to ask first Neil and then  
9 Dermot what their views are on the proper mix of IP  
10 protection going forward as we look at this issue.

11 NEIL HARL: On this issue, I think the  
12 important point is -- it's already been noted that  
13 farmers don't want the biolawsuit, and so when  
14 you're going generic, you want to be sure there is  
15 total purity.

16 We've been through this with StarLink.  
17 We know there's mechanical contamination. We know  
18 there's pollen drift, all kinds of reasons why  
19 patented material do get into other germplasms.  
20 But there's more than that. There's also the PVPA,  
21 the Plant Variety Protection Act. There could be  
22 that kind of intellectual property protection  
23 existing within a bag of generic seed, and that may  
24 not be at all clear because you've thought, well,  
25 this is just a Roundup Ready problem. There may be

1 other patented or PVPA protected rights within that  
2 bag.

3                   So we have purity issues, and this is  
4 why I've concluded that I think it's necessary for  
5 this to be a matter of regulatory action, not -- I  
6 think industry should be involved. I think there  
7 should be a process by which the best minds pull  
8 together the limitations and conditions,  
9 restrictions that should be part of a generic seed  
10 regimen, but I think it really has to come  
11 eventually to the point of where we have the  
12 enforcement power of government and the objectivity  
13 and fairness that comes the same way.

14                   JAMES MacDONALD: Dermot, do you have  
15 anything to add?

16                   DERMOT HAYES: Just to say that there  
17 is an urgency about this. If we fail to maintain  
18 our registration in China, then we will -- and the  
19 fear comes when that becomes an issue, we will  
20 definitely have another breakdown in our system.  
21 Therefore we can't separate that back out of the  
22 commodity system, so therefore we lose the Chinese  
23 market, so what everybody has said here is we need  
24 a third-party institution to accept an offer from  
25 Monsanto to take that data and start that five-year

1 registration process and make sure it's finished in  
2 time, and if anything good comes out of this whole  
3 conference, it would be that third-party  
4 institution.

5 My preference would be for the soybean  
6 association or ASTA, but if Neil is suggesting a  
7 regulatory approval, it's six of one and half dozen  
8 of the other, but we definitely need to get that  
9 going. Monsanto has made a pretty generous offer.  
10 Most companies would actually sell that data, so I  
11 think it's time to move, and I hope that the people  
12 who are in that kind of authority in the real world  
13 has come.

14 NEIL HARL: There has to be  
15 objectivity and standing in the world economic  
16 community for it to really work, and that's why I  
17 think a third-party presence makes a lot of sense  
18 also.

19 JAMES MacDONALD: Ray, anything to  
20 that?

21 RAY GAESSER: Yeah, and to say we have  
22 been talking about this issue a lot, and it is  
23 really important to us, and we do -- everything  
24 that Diana and everyone down the line said is  
25 actually true. It's so important that we solve the

1 issue with Roundup Ready 1, but there's many other  
2 traits coming on that will expire soon, and we have  
3 to be -- acknowledge those needs also, but you  
4 know, time is of the essence here.

5 We don't have a lot of time with  
6 Roundup Ready 1 if we want to have the ability to  
7 use it generically in the United States and around  
8 the world.

9 JAMES MacDONALD: Jim, do you have  
10 anything?

11 JIM TOBIN: Yeah, just a couple  
12 things. As I said earlier, we welcome industry  
13 involvement. We think there should be a lot of  
14 people at the table when this is sorted out because  
15 it is the first major trait coming off patent, and  
16 we welcome insight and support in doing that.

17 I'd like to make just a few points so  
18 people know what the generic picture will look  
19 like. First of all, there are over 150 seed  
20 companies that are licensed today to use the  
21 Roundup Ready trait in soybeans. Every one of them  
22 will have the ability to sell in 2015 Roundup Ready  
23 in soybeans without any new regulatory work,  
24 without any new legislation. That's already  
25 possible because the soybeans reproduce; as they're

1 producing a seed, reproduce that trait.

2           There are also a number of stacks that  
3 are already -- have already been enabled. The STS  
4 stack that I mentioned earlier was planted on, we  
5 estimate, about three million acres, so Roundup  
6 Ready with STS is available and can be available in  
7 the future.

8           We've enabled a number of other  
9 stacks, the stack Replenish, a new oil quality  
10 trait that DuPont has. We made our data package  
11 available to them so they could do that. There's a  
12 new 2,4-D stack, 2,4-D trait, that's coming out  
13 that there would be the ability for someone in the  
14 industry to stack that, and we would provide  
15 regulatory support for that.

16           So it's possible without new  
17 regulation for quite a bit of this to occur  
18 already, but we're very open to having discussions  
19 about additional things in that area, and also the  
20 regulatory support for the international approvals,  
21 we think, is a good approach, and like I say, we've  
22 made that offer to the industry, so just a few  
23 things to clarify the discussion.

24           JAMES MacDONALD: Let me bring up a  
25 related question and throw out to the panel, which

1 is, is there a role for continued public investment  
2 in plant breeding? What's that role? And what  
3 should we be doing in the public sector that we're  
4 not doing now in terms of supportive plant  
5 breeding? Anybody want to take that?

6 NEIL HARL: I would like to address  
7 that briefly. I was on the ACAB biotechnology in  
8 2000 and 2002. It was really created to deal with  
9 the Terminator. Some of you may recall the  
10 Terminator controversy.

11 But we also dealt with the question of  
12 how to cope with the very issues we're dealing with  
13 here today, and the conclusion was that one of the  
14 steps should be an increased amount of spending in  
15 the public sector to encourage conventional crop  
16 breeding, and we sent that, I think, to everyone in  
17 positions of responsibility.

18 Unfortunately, since then we've had a  
19 period of difficulty with respect to budgets, and  
20 so the amounts have actually been declining over  
21 time. So if there's enough public interest in this  
22 to support it at Congress, support it at the state  
23 level, I think this is a good thing to do.

24 It also adds another element to the  
25 concentration issue because they can feed germplasm

1     into the system as they did back in the '70s, a  
2     different kind of germplasm of course, but I think  
3     it was an essential part of the total solution  
4     today is to encourage that. It's just as I looked  
5     ahead, I don't see much chance for that because of  
6     the shortage of funds.

7                   JAMES MacDONALD: Any reactions?  
8     Anyone else?

9                   RAY GAESSER: I'd speak to that a  
10    little bit, and thank you. You're exactly right,  
11    and the Iowa Soybean Association and American  
12    Soybean Association has really been trying to push  
13    that idea. At the check-off level, the state and  
14    national do invest in soybean research, you know,  
15    at our universities and small businesses.

16                   But at the national level, there's  
17    really a limited amount, and our associations have  
18    been pushing for a long time for increased funding  
19    for particularly soybean research because that's  
20    our charge but for more research in production  
21    agriculture and continuing the conventional traits  
22    and giving a generic market to farmers in having  
23    that option.

24                   JAMES MacDONALD: Dermot.

25                   DERMOT HAYES: One of my colleagues at

1 the university is responsible for the big project  
2 to examine the corn genome, and that's been highly  
3 researched and something I'm very proud to be  
4 associated with.

5                   However, and there's a lot of other  
6 good basic research on disease and in agronomy, and  
7 that's all legitimate public sector/taxpayer-funded  
8 basic research. We haven't -- if you look at the  
9 wheat example, there is public sector research on  
10 wheat, but I think university professors are not  
11 real good at making cold sale calls and meeting  
12 deadlines and forming teams, and so probably we're  
13 not as good as we could be, as the private sector  
14 is, at taking that basic research and turning it  
15 into a sales product.

16                   And therefore, I think there's a  
17 natural break-even point, and that is the public  
18 sector does a lot of basic research and should get  
19 funding for that, but when it gets to the point  
20 where a private sector company can do it more  
21 efficiently, then I think we need to turn it back  
22 over.

23                   JAMES MacDONALD: Diana?

24                   DIANA MOSS: Can I just make one  
25 comment? Just listening to what's been said here,



1 I think perhaps with generic Roundup Ready 1, we  
2 will get more public sector funding because of the  
3 lack of restrictions on how the traits can be used  
4 and combined with other traits to potentially  
5 produce new products.

6 But I think the whole catch phrase  
7 here is certainty. If we want a successful  
8 experience with the development of generic Roundup  
9 Ready, then there has been to be certainty, and the  
10 certainty should have started about five years ago  
11 and not today. I would argue that we're even  
12 behind the curve even starting with this today.

13 It's really a very urgent situation  
14 because of the lead times involved. Because of the  
15 production of very complex stacked traited  
16 products, certainty is the name of the game. If we  
17 want to get new products to market, there has to be  
18 clear -- clarity, there has to be certainty, there  
19 has to be a clear set of rules that are enforced  
20 and preferably that have all the stakeholders  
21 involved and are pursued not only at the federal  
22 level but hopefully at a regional or a state level  
23 as well.

24 JAMES MacDONALD: I think looking at  
25 the clock that we'll give Diana the last word on

1     that.

2                     One point I want to make, I notice our  
3     stenographer here. DOJ typically publishes the  
4     results of these workshops. They publish the  
5     transcripts on their website some -- I don't know  
6     when that will be, but for those of you who want to  
7     stay on top of it, review what's been said here,  
8     that information is going to be available.

9                     Our panel members will be around after  
10    the panel for those of you who want to ask them a  
11    little bit more about positions they've taken, and  
12    right now I hope you'll join me in thanking the  
13    panel members for their time and comments.

14                    PHIL WEISER: We'll be putting the  
15    transcripts up online, and for those who can't be  
16    physically here, we'll invite everyone to look at  
17    the issue. The folks who joined us here have come  
18    from different parts of the country and some not so  
19    far within the great state of Iowa.

20                    Let me start by introducing them, and  
21    then we'll start with a moderated discussion like  
22    the one we just had.

23                    Sitting right next to me here, Brian  
24    Buhr from the economics department in Minnesota  
25    where he also has earned the outstanding policy

1 contribution from the American Agriculture  
2 Economics Association. Thank you for joining us.

3 Rachel Goodhue. I believe you're  
4 native Iowan; is that right?

5 RACHEL GOODHUE: Yes.

6 PHIL WEISER: Good to have you back  
7 home now, a professor at the University of  
8 California Davis where she's in the resource  
9 economic department.

10 Mary Hendrickson is someone known to  
11 many of those here. She's not too far at the  
12 University of Missouri. She's also a part-time  
13 farmer on her family's farm, I understand.

14 MARY HENDRICKSON: No. Only  
15 occasionally.

16 PHIL WEISER: Occasional farmer, I  
17 guess. Sitting next to her is John Lawrence. John  
18 is an agriculture economist at Iowa State and has  
19 been named one of the top five most influential  
20 people -- top twenty-five. Not top five. I just  
21 promoted you a little bit. Seeing if you were  
22 paying attention. Top twenty-five most influential  
23 in the top -- in the past twenty-five years.

24 Chuck Wirtz comes to us as an  
25 independent hog producer from here in Iowa and

1 finally Patrick Woodall who's the research director  
2 at Food and Water Watch, a nonprofit consumer  
3 organization.

4                   So you should notice like the last  
5 time, there will be folks in the jackets who are  
6 going to be asking you to submit your comments.  
7 You can see them in the back of the room there.  
8 They will walk through. Take an index card. Feel  
9 free to give them your comments so I can work them  
10 into the questions.

11                   I've got some questions that will get  
12 us started. A number of them feed off of some of  
13 the earlier discussions. The first is that farmers  
14 are increasingly concerned that they are squeezed  
15 in terms of the supply chain, and one of the  
16 related concerns there that we'll hit more at the  
17 end of the workshops in Washington is the  
18 differential between what you pay for at retail  
19 versus wholesale raises real concerns, and most  
20 particularly from the antitrust perspective, there  
21 has been discussions that biopower, often called  
22 monopsony, is part of this equation.

23                   And I guess I'd like to ask folks to  
24 explain a little bit about the dynamics of the  
25 supply chain and where concerns arise. Patrick, if

1     you might start off on this.

2                   PATRICK WOODALL:  Sure.  It's great to  
3     be here.  We're very happy that this workshop is  
4     being held and that DOJ and USDA are having these  
5     important and, we think, long overdue discussions  
6     on these issues.

7                   I think for us what we see is that the  
8     decline in real farm need prices and a steady  
9     increase in retail consumer prices for groceries  
10    shows that there's big carveout in the middle where  
11    the biggest companies, the consolidated companies,  
12    are able to capture more and more of the value  
13    chain in the marketplace.

14                  This happens, I think, in part because  
15    larger companies are able to assert more buyer  
16    power, both over farmers, which has been shown in,  
17    I think, all the livestock sectors pretty well but  
18    also in other areas like the retail sector which  
19    exerts tremendous pressure on food manufacturers,  
20    on produce marketers, and even on consumers, so  
21    what we see is that even when grocery mergers occur  
22    that increase the kind of efficiencies, those  
23    efficiencies aren't really passed on to the  
24    consumers.  They're captured by the companies and  
25    not delivered to the beneficiaries of the people

1     buying food in the supermarket.

2                   Obviously, on the farm gate side, we  
3     see the opposite trend which is the pressures by  
4     the meat packers and the shippers and the grocery  
5     chains are pushing down and down on farmers, so the  
6     real farm gate prices for almost everything have  
7     been coming down for the past several decades while  
8     the real cost to produce these goods has been going  
9     up. And this puts kind of a double squeeze on the  
10    situation. Farmers get a little less every year.  
11    Consumers pay more every year, and the companies in  
12    the middle, the fewer and fewer companies in the  
13    middle, are taking a bigger bite.

14                  And that, I think, for consumers and  
15    for farmers is an extremely problematic situation.

16                  PHIL WEISER: Chuck, you are obviously  
17    on the front lines raising hogs. Have you  
18    experienced similar concerns? What's your  
19    perspective on this issue?

20                  CHUCK WIRTZ: I'm an independent pork  
21    producer, and I'm -- Todd Wiley happened to make  
22    mention of those of us that try and negotiate pigs  
23    and try and set the marketplace. I'm one of the  
24    people that are selling 5 percent of the hogs in  
25    this country that is trying to set the price.

1                   It gets extremely difficult at times;  
2   in fact, almost to the point where you want to give  
3   up and join the ranks of others. We're courted a  
4   number of times to sign shackle space agreements  
5   with packers, and we try and resist doing that for  
6   the pure point that we believe that market  
7   transparency and market discoveries is ultimately  
8   important for a free market to flourish.

9                   We have always been in this  
10   marketplace price takers. We have never been able  
11   to be price makers, and quite honestly, I don't  
12   have -- I think the power has even shifted out of  
13   the packers' hands. Some people want to try and  
14   take aim at the packers, but the retail sector, in  
15   my opinion, has become so strong that when I talk  
16   to them, when I sit in circles, sit around tables  
17   and visit with them about challenges that they face  
18   in their industry, they pretty much echo the  
19   sentiment that we have felt for years in that  
20   they're starting to be told "This is what we'll pay  
21   for this particular cut of meat. If you want to  
22   sell it to us, fine, and if you don't, that's fine  
23   too."

24                   And so I think the U.S. consumer needs  
25   to understand that it's a very difficult situation

1 out here continuing to try and produce food not  
2 only for the people in this country but for people  
3 around the world. It's challenging.

4 PHIL WEISER: John, what's your  
5 perspective on the market structure and where the  
6 competitive concerns are?

7 JOHN LAWRENCE: Well, I think as both  
8 previous speakers said, there's concerns kind of  
9 both ends. I think one of the things as you  
10 mentioned as you started the discussion on the  
11 farm, the wholesale spread has widened over time.  
12 I think a part of that is we track prices, and we  
13 don't necessarily track costs. There's research  
14 that does that.

15 But part of it is we're buying a  
16 different product than we did a few years ago.  
17 There's more further processing, more convenience,  
18 more packaging, more advertising, and so on that  
19 comes out of those margins.

20 Certainly in the hog side, as Chuck  
21 just said, with the small number in the spot  
22 market, I think that's a genuine concern. Where is  
23 price discovery going to occur? What are the  
24 functions of price discovery? What do we need it  
25 to do? Is it possible to go further downstream for



1     that price discovery? Is it possible to have other  
2     types of price discovery?

3                     And I think those are questions that  
4     the industry is needing to wrestle with in some  
5     regards, whether it be the convenience or, as Chuck  
6     said, the people who want to join the contracting,  
7     its success is going to kill it because many that  
8     were so successfully using somebody else  
9     discovering price to use in my formula, now there's  
10    nobody left to discover price, and so I think  
11    that's a challenge.

12                    PHIL WEISER: I'm going to come back  
13    to this question with Mary. Before I do, Rachel, I  
14    know you've thought about this margin you see that  
15    people talked about. Any thoughts you want to  
16    share on that topic?

17                    RACHEL GOODHUE: Sure, and I'll go  
18    back to what John said. You see me checking  
19    something off here on my list. And in terms of  
20    thinking about margins, as John said, it doesn't  
21    talk about the other costs, and I was thinking  
22    about out in California talking to some lettuce  
23    grower/shippers, and what these folks have done,  
24    and they've integrated up the chain. Instead of  
25    building an ethanol plant, they started -- they

1 started a big salad plant, have a lot of specialty  
2 products.

3 They're still negotiating with  
4 retailers, and they still have this issue mentioned  
5 by Chuck of having people tell them what price they  
6 are willing to pay.

7 And then the other thing that's  
8 happening is they have more value added, but  
9 there's also a more stable market for them. The  
10 price of their product isn't nearly as highly  
11 correlated with the price of bulk lettuce,  
12 commodity lettuce, as you think it would be, and  
13 it's because of those other costs.

14 So you see those more stable price for  
15 them, more stable retail price for that lettuce,  
16 but it's being driven in part because that  
17 commodity lettuce is a more important share of  
18 their product.

19 So when we look at those margins, it's  
20 not just who's capturing them but it's also about  
21 is it an input cost, or is it about some sort of  
22 market power?

23 PHIL WEISER: Brian?

24 BRIAN BUHR: Thank you. Thanks for  
25 being -- pleasure to be here today. I always like

1     being the fifth one. There's little left to say.

2                     I think the important part of this,  
3     though, it's interesting how today listening to  
4     this, I think all of you go from one end of the  
5     table to the other and the difference in  
6     perspectives that happen from the same thing. It's  
7     like the blind man is trying to tell if it's an  
8     elephant or not. People feel different things.

9                     But I think in this case it's  
10    important to keep in mind that these business  
11    organizations and market structures are a spectrum  
12    of alternatives, so John was talking about open  
13    markets and how important those are. I didn't  
14    share his views on where he thinks those issues of  
15    competition are and another person saying that  
16    clearly these margin issues show there's a lack of  
17    competition in markets, and that's kind of where  
18    economists are at this. There's a spectrum of  
19    competition here from open markets to complete  
20    vertical integration and monopoly that we're  
21    concerned about.

22                    But in that context, I guess it's kind  
23    of a challenge to think about is that competition  
24    is not only about that open market that we fixate  
25    on, but if you look at contracts, you look at

1 vertical integration, you look at emergence of  
2 local foods, organic foods, and so on, all of those  
3 in the economists' view are responses to  
4 competition. They promote competition in markets.  
5 They develop new products, and they come out of  
6 trying to find ways to move through the market.

7               So we have had concerns about pricing  
8 at farm levels. We've had concern about pricing at  
9 wholesale levels. Retail certainly is there. For  
10 the most part the research on that is fairly  
11 suggestive that there is some sign of market  
12 pressure but that it's not enough to offset the  
13 competitive advantages of scale and integration and  
14 the types of innovations.

15              You know, the other challenge to think  
16 about in business processes is as an innovation  
17 process in itself. So maybe jumping ahead to some  
18 of your questions, but from a policy perspective,  
19 limiting business organization structures and  
20 limiting those opportunities is sort of a  
21 suppression of innovation in the sense of how is  
22 the market structure organized. So to think  
23 broadly about those issues and the importance of  
24 them, of really defining is there an issue of  
25 competition, which is the difficult question.

1                   PHIL WEISER: So two things. One is I  
2 encourage all the speakers to speak into the  
3 microphones so folks in the back can hear. That's  
4 the first thing.

5                   The second thing is just to ask a  
6 question that is notable. It underscores the  
7 iterative nature of this process. So at the last  
8 event in Washington, this issue, which is one of  
9 the big issues on people's minds, is one we will  
10 have to grapple with more intensely. Call it the  
11 wholesale/retail differential or whatever. From  
12 farm gate to retail, I think, is what Patrick  
13 called it.

14                  Here's the question, and I encourage  
15 everyone here and everyone who's watching and going  
16 to follow later, commodity prices for farmers go up  
17 and down, but retail prices tend to stay higher  
18 once they go up. The consumer and the farmer both  
19 lose. Where is this margin all going?

20                  We've had some discussion on this  
21 point. For others who have experience in research,  
22 please share with us so we can help grapple with  
23 this question.

24                  Let me go to another point that was  
25 raised inherent and let Mary start on this, which

1 is the nature of the contracting. So one form of  
2 the market structure that has evolved over time is  
3 having more spot market-driven price discovery to a  
4 greater reliance on forward contracting with more  
5 limited spot markets.

6 I think the statistics offered by Todd  
7 Wiley earlier was that there's only 5 to 6 percent  
8 of hog sales are driven by spot market with a lot  
9 of contracts that are going to be pegged with an  
10 open term.

11 And I guess, Mary, I'd ask you, having  
12 sort of thought some about this dynamic is whether  
13 it's effective or whether there are concerns that  
14 you want to raise with respect to it.

15 MARY HENDRICKSON: Well, I have to say  
16 that I'm no expert on price, and I'm sitting here  
17 around a bunch of economists as a sociologist, so  
18 I'm not going to address the price issue because  
19 that's not something I'm going to model and think  
20 about the price.

21 I think the important thing about  
22 contracts and the way that we've seen consolidation  
23 happen is that there are other issues, and there's  
24 other social/community/environmental issues that  
25 are really important in this, and at the farm

1 level, I think one of the big issues is impacts on  
2 choice and autonomy, and we've heard some of those  
3 discussions today, but as you start to think about  
4 what happens with contracting, there becomes --  
5 there's a lot more specifications, particularly as  
6 you move from marketing contracts into production  
7 contracts about, you know, what can be grown? How  
8 can it be grown? What kinds of -- in the livestock  
9 arena, what kinds of medicine and veterinary health  
10 can be given to it?

11           And so really, you're moving decision  
12 making away from the farmer and into the hands of  
13 absent management, and as you do that, that is also  
14 a way to move profit away from the farmer and into  
15 the hands of other people who control the  
16 contracts.

17           And so I think that that's really  
18 important in terms of thinking about choices and  
19 autonomy and just that natural idea that farmers  
20 are really interested, I believe, having grown up  
21 on a farm and hearing the farmers talk today -- are  
22 very interested in thinking through themselves how  
23 they want to care for animals, what kind of crops  
24 they want to plant, how they want to manage their  
25 soil and manage their water and all these kinds of

1 different things, and I think that's the question  
2 we start to face as we see this consolidated market  
3 happening.

4 And so I don't really want to -- for  
5 me it's not so much a question of price even though  
6 I think in jurisprudence you have to -- you know,  
7 it's been kind of defined down to that, that  
8 question, but I think that there are these other  
9 questions that are in play.

10 And the other thing I want to say too  
11 from our work on this, you know, there are quite a  
12 bit of stories about packers in particular talking  
13 about consolidating to be large enough to provide  
14 protein counter, for instance, for large retailers.

15 And so that is actually given as a  
16 reason to consolidate, and so the retail sector  
17 does seem -- I mean we didn't have a national  
18 retail sector, right, for a long, long time, and  
19 we've got one now at the national level, and we're  
20 now forming global retail sectors.

21 So the question is as we patent -- if  
22 a national retail sector starts to force  
23 consolidation, what will happen as we get to a  
24 global retail sector, and what does that mean for  
25 any kind of smaller independent players anywhere



1 along the chain, be it farmers or small processors  
2 or small retailers? And I think that there are a  
3 number of questions about that in terms of how the  
4 food chain is organized.

5 PHIL WEISER: Chuck, I want to turn to  
6 you. Eddie Wise said, which Mary has echoed, and  
7 I'd like you to maybe explain, if you could, if it  
8 is indeed what you were suggesting, if you do sign  
9 these contracts, his words is you're dead. What's  
10 that sentiment? Is that what Mary is saying? Your  
11 autonomy is limited?

12 Why is there such a concern about  
13 these contracts? Obviously a lot of people have  
14 done it. Could you give a little more explanation  
15 on -- from the farmer perspective how these  
16 contracts are viewed?

17 CHUCK WIRTZ: Well, my -- I try and  
18 negotiate my pigs, and my typical day starts out, I  
19 will -- I happen to have the luxury of living in  
20 north central Iowa, so I have -- from a livestock  
21 pork producer, I happen to have the luxury of  
22 having access to almost every large packer that  
23 there is, so it's a little bit easier for me to  
24 negotiate a price than it is maybe someone who only  
25 has one or two major packers in their backyard.

1                   But my typical day starts out, I will  
2    make the rounds, and I always tell the packer I'm  
3    making the rounds, and I will call up to six  
4    different packers. And the question I will ask  
5    them is if they need any pigs.

6                   As an example today, I called them up  
7    and said "Are you going -- I'm trying to negotiate  
8    pigs for next week. Do you need any pigs next  
9    week?" Well, when you call six packers and you're  
10   to the fourth one and no one needs any pigs, you  
11   start to get a little nervous that you might not be  
12   able to get your pigs sold.

13                  And you're in such a time-sensitive  
14   system. As Todd Wiley said, you know, you have  
15   pigs. I've got pigs coming on Monday, and I have  
16   to empty a barn, and so you're struggling to try  
17   and figure out, oh, my God, where am I going to  
18   move these pigs?

19                  So that's the reason you would sign  
20   those contract shackle space agreements because  
21   they always afford you an opportunity to sell your  
22   pigs because if I call one particular packer -- and  
23   I won't name who it is -- their comment to me, the  
24   buyer's comment is, you know, "We're 94 percent  
25   bought."

1                   I said "So what? You're 94 percent  
2   bought for June. You have enough committed pigs on  
3   shackle space agreements that 94 percent bought  
4   does not scare me." 100 percent bought scares me  
5   because now I can't sell pigs.

6                   So it becomes very nerve-racking when  
7   I'm trying to negotiate pigs that I'm the only one  
8   out there trying to do it, and that's facetious  
9   because I'm not the only one, but I'm one of the  
10  few that's trying to do it, and I'm going to  
11  influence the market of probably 50 percent of the  
12  hogs that are out there that are on shackle space  
13  agreements but are on pricing formulas that are  
14  driven off of what I negotiate.

15                  Now, when the DOJ called me, they said  
16  "Well, couldn't you actually have access to inside  
17  information?" And that's true. There's market  
18  reports that come out, and we talked about market  
19  transparency. I think it's very, very important  
20  that there be accurate information available to the  
21  marketplace so that we understand what the market  
22  is.

23                  So at -- in the morning at about  
24  11 o'clock, there's a morning report that comes  
25  out, and I'm always looking at that to see what is

1    being offered, and at 3 o'clock another report  
2    comes out, and you're trying to figure out what's  
3    being offered. And there's cutoffs for those time  
4    periods, and packers will oftentimes bring you a  
5    bid at 9:31 because 9:30 is the cutoff. And so if  
6    they're going to bring you a higher bid, they bring  
7    it to you at 9:31 because it won't make the morning  
8    report.

9                    If they're going to sell you  
10   something -- buy something from you in the  
11   afternoon, they'll come at 1:31 because 1:30 is the  
12   cutoff for the afternoon report. Or in most cases  
13   recently, most of the negotiated pigs have happened  
14   in the live market because most of the contracts  
15   that are shackle space agreements that are signed  
16   with packers are available and are driven off of  
17   what we call the western corn belt, which is a  
18   lean-based market, and so the live market doesn't  
19   influence that.

20                   So when they need pigs, they know how  
21   to buy them so as not to influence the cost of all  
22   their pigs. Now, is that bad? It's legal. They  
23   can do it. What I do, I'd probably do the same  
24   thing if somebody made the rules that way.

25                   But it is -- it is a challenge. I

1 mean we're all human, and the tendency will be to  
2 game the system and work the system to your  
3 advantage.

4 PHIL WEISER: John, Chuck touched on a  
5 number of aspects of the dynamics of how prices are  
6 set and how these contract relations work. Do you  
7 have a concern on this transparency issue, or how  
8 would you suggest we think about it?

9 JOHN LAWRENCE: Well, the  
10 transparency, the mandatory price reporting was  
11 mentioned this morning, and it's -- it has been a  
12 significant change, I think, in the way the hog  
13 market is priced. Pork is not included in the  
14 mandatory price reporting at this time. There is  
15 the data available, but as Chuck said, there are  
16 rules there. It comes out -- has to be in by 9:30.  
17 It gets reported at some point after that.

18 Previous to that, there were people  
19 that knew the phone number of the market reporter  
20 that was collecting the information over the phone,  
21 and so for example, they would call. This would be  
22 a farmer who would call Des Moines's office, find  
23 out what that individual was hearing. Well, the  
24 individual was not hearing anything because the  
25 data is transferred electronically in at a certain

1 time, and so there's been some changes.

2                   So yes, there's transparency in that  
3 the prices are all reported according to law, and  
4 they get passed out at certain times, but you don't  
5 see a lot of the formation. And I don't know if  
6 Chuck does this. I know on the cattle side there  
7 are -- private sector, there are clubs that they  
8 join that they get messages to the text -- their  
9 phone as soon as a trade occurs, so packer, you  
10 know, offers me a bid at 10:30. At 10:31 it's  
11 punched into the phone, and it gets sent to  
12 everybody who's in the system.

13                   And so they found that the public  
14 sector is not providing them enough information  
15 through -- to make the kind of decisions that you  
16 need to make. They want to hear it from other  
17 people.

18                   PHIL WEISER: Brian, you started this  
19 as well. Do you have some thoughts you want to  
20 share?

21                   BRIAN BUHR: Well, I think I agree  
22 pretty much. The transparency is given in markets,  
23 that ability to be able to make decisions based off  
24 reasonable prize.

25                   My concern, I guess the concern I'll

1 voice, is usually transparency comes on to me let's  
2 have a policy about a requirement for 25 or  
3 30 percent of hogs or in the open market or  
4 something like that, and that creates a dilemma  
5 for, you know, is that reducing producers' options  
6 who are choosing to take contracts or purchase  
7 versus negotiated prices the same way? So  
8 transparency is sort of that, you know, you can  
9 either regulate these markets or you can look at  
10 how do we facilitate that transparency, and John's  
11 example is a good example.

12                   And with Web-based systems, you know,  
13 text messaging and so on, the information system  
14 dimension of this, I think, is a huge part of  
15 market formation that's just starting to get in  
16 place in agriculture, and it's one of those  
17 elements again where, I mean, you're talking  
18 caution about policy and regulation issues and that  
19 the market finds a way, that there are ways to get  
20 that information out there. That information is  
21 important for decisions, and we ought to focus  
22 carefully on trying to achieve that point where we  
23 make that open market as efficient as possible, as  
24 transparent as possible, so that it becomes a  
25 choice that makes those decisions that packers and

1 producers want to make to achieve profitability to  
2 be able to make those decisions, whichever way that  
3 goes.

4                   And so, you know, it's kind of that  
5 free market. We mentioned the Chicago economist  
6 before, kind of open market version. The part they  
7 miss usually is that there is a need for open  
8 markets to fail, and you need to have mechanisms to  
9 try to correct those, and a lot of the transparency  
10 information flow is -- exchange of information is  
11 absolutely critical to that, and that information  
12 includes one other important point here, I think,  
13 is quality information that a lot of what drives  
14 setup for contracts is the quality and the timing  
15 issues and shackle space.

16                   And open market price is hard over the  
17 phone to say "I've got hogs that are 51, 52 percent  
18 lean," you know, such and such down to the grade of  
19 that hog and convince that packer that's what they  
20 are, and so you start to contract.

21                   We have the mechanisms now to trace  
22 animals, traceability protocols and so on, identify  
23 genetics, pass that through the supply chain, and  
24 let the open market work better. And I think  
25 that's a place where policywise we really ought to



1 look at how do we facilitate that information  
2 structure rather than regulating that information  
3 structure, so really facilitation rather than  
4 regulation becoming part of that.

5 PHIL WEISER: John?

6 JOHN LAWRENCE: Phil, just to  
7 follow up on one thing I don't want lost here, and  
8 that was what Chuck went through as starting his  
9 day and calling six people and sorting this out.  
10 How much time does that take, and is that a daily  
11 event, or is that once a week or once a month when  
12 you have hogs to sell?

13 CHUCK WIRTZ: It takes a long time.  
14 In fact, my wife wonders why it takes me so long to  
15 do chores in the morning, and I tell her, well,  
16 it's because I spent two hours in the hog building,  
17 and one hour was on the phone trying to deal with  
18 packers.

19 But you kind of get -- it doesn't have  
20 to be a real long conversation with packers. You  
21 can pretty much run through, and they'll tell you  
22 whether they're sitting pretty good for next week.  
23 They really don't need anything or they'll say "I  
24 got to wait until Thursday because Thursday at noon  
25 all my committed suppliers turn in what they have

1 for loads, and then I'll kind of know if I have a  
2 need or I don't have a need."

3                   So you wait until Thursday noon, and  
4 then you call in. I think the -- I always worry.  
5 I don't ever raise cattle, but I always hear about  
6 the show list, and then I always hear about cattle  
7 being traded in about a 30-minute time window on  
8 Friday afternoon, and I'm always worried if the hog  
9 industry ever gets to that point, I'm going to be  
10 toast because my barns are so time-sensitive that  
11 if I miss the boat and don't get my pigs sold, I'm  
12 not exactly sure what I'm going to do.

13                   JOHN LAWRENCE: And I guess my point  
14 is, one of the reasons I think people are going to  
15 contracting is a convenience issue because that's a  
16 lot of work and particularly if you're studying the  
17 barns and the time.

18                   CHUCK WIRTZ: It is. It is, but my  
19 encouragement to all producers and specifically as  
20 producers get larger, I'm not asking them to  
21 negotiate all the pigs. I'm just saying for God  
22 sakes, take one load a week and negotiate it  
23 because if all of us would just do a little bit, if  
24 all of us would recognize the importance of  
25 negotiating the market and everybody would do a

1 little bit, it wouldn't depend on all of us to do  
2 all of it.

3 PHIL WEISER: So let me go to Patrick  
4 and Rachel in a second, but I would want to note  
5 that a lot of discussion about the role of public  
6 policies, there are three concepts that have  
7 highfalutin economic jargon, but they've been  
8 nicely illustrated.

9 One is concerns about information  
10 asymmetry and how to facilitate information that  
11 can enable people to make decisions. That's true  
12 for end consumers and for producers. Second, the  
13 prior panel talked a lot about what gets called  
14 public goods. And intellectual property production  
15 is one response to this concern. So is funding and  
16 research, which is something that was called for in  
17 the prior panel.

18 And then also I think this point about  
19 a market failure being able to stay in the market.  
20 One thing that the secretary mentioned is quite  
21 interesting is getting broadband to all rural  
22 producers so they can participate effectively in  
23 the ecosystem, I thought, was an important point.

24 Let me go to Patrick and Rachel on the  
25 following points worth noting. The level of

1 contracting differs in different commodities  
2 between poultry, hogs, and cattle. Is there  
3 anything you learned from that comparison on this  
4 discussion, Patrick, you might be able to share?

5 PATRICK WOODALL: Well, I think the  
6 kind of question that producers ask is the surety  
7 of being able to market their goods through a  
8 contract and may make up for the kind of price  
9 volatility. That is, producers make a trade-off.  
10 They get -- what they get from a contract is they  
11 eliminate some price risk, and they eliminate some  
12 marketing risk.

13 But I think what's underdiscussed is  
14 that in exchange, they pick up a giant amount of  
15 contract risk, and this contract risk is in many  
16 fold. Mary talked about some of these things, but  
17 I think generally one of the things that's not  
18 talked about enough is this investment risk; right?  
19 Because producers, especially in the hog and  
20 broiler industry, have to invest between half a  
21 million or a million dollars into a facility to  
22 produce livestock at spec to send to the packer.

23 This is a burden that is placed on the  
24 grower/producer, but yet the liability is not on  
25 the buyer at all, and this is a significant

1 overhang, a debt overhang on farmers, that is tied  
2 to a contract. This becomes especially perilous  
3 when integrators or packers fail.

4 Now, this year a whole bunch of hog --  
5 pork processors failed in the Southeast, and  
6 Pilgrims Pride has been under bankruptcy, and many,  
7 many growers and producers that have this overhang  
8 of debt that was required upon them for their  
9 contracts, 60 percent of hog producers that are  
10 under contract are required to make giant capital  
11 investments just to secure their contract. You go  
12 to upgrade their new buildings. This risk on the  
13 debt side combined with the risk of contractor  
14 failure presents a significant risk to producers  
15 that I think is downplayed on the efficiency and  
16 benefits and convenience of marketing at a  
17 consistent price.

18 I think this kind of balance is not  
19 really discussed hardly at all in real terms for  
20 producers because it is a significant risk, and  
21 that's on top of the risk of the liability, the  
22 environmental liability for dealing with manure  
23 management and then the other risks that producers  
24 might have.

25 I mean I think the real understanding,

1     when you think about what's going on in the broiler  
2     industry, 99 percent of birds are produced under  
3     contract. It's virtually 100 percent integrated.  
4     Growers don't own the birds. They just produce the  
5     birds on to service, but the reality is that  
6     50 percent of poultry producers only have one or  
7     two integrators that serve them, so there's really  
8     no market at all, and more -- about 60 percent of  
9     them don't -- feel they have no alternative to the  
10    integrator they're dealing with now.

11                 So this contractor risk can lock  
12    producers in, and they can lock them into some very  
13    significant cost problems, both on the debt side,  
14    on the contractor failure side, and on the  
15    liability side, and many of them have nowhere else  
16    to go.

17                 So there is a difficulty with the  
18    negotiated price marketing, and it's a real  
19    difficulty, but the reality is on the hog sector,  
20    you're talking about 10 percent of the trades that  
21    are on the open market, and they are influencing  
22    the prices on the formula side that could be half  
23    or more of the marketplace, so that also creates  
24    some kind of situations where a tiny number of  
25    buyers on the spot market can really manipulate a

1 thin market like hogs pretty easily here actually,  
2 so we're concerned about all of these things.

3 The contract risk is significant. It  
4 needs to be talked about in alignment with this  
5 overall benefit of the contract.

6 PHIL WEISER: You want to jump back in  
7 on that, Mary?

8 MARY HENDRICKSON: Yeah. I just  
9 wanted to say that I think one of the big things  
10 about contracts is that as Patrick was mentioning,  
11 if you have options on where you want to contract,  
12 and Bill Heffernan has done some studies in Union  
13 Parish, Louisiana, over 30 years, and as options  
14 from integrators went down from four in 1969 to two  
15 in 1981 and then one in 1999, farmers are much less  
16 satisfied with the contracts, felt much more locked  
17 into arrangements that they didn't really want to  
18 choose, and felt like they had no power in  
19 negotiating the contract.

20 So I think it's really important -- I  
21 mean contracts in and of themselves can be really  
22 wonderful things for reducing risk but only if  
23 there is a -- there's no power in asymmetry there.  
24 You've got to have equal -- some sort of equal  
25 positions of power to negotiate a good contract,

1 and that has to do with if you have options, where  
2 you're going to sell things and where is your  
3 market.

4 And you know, we've seen this in the  
5 poultry industry, to some extent in the hog  
6 industry, I think. It's, you know, that there just  
7 aren't -- if you have a poultry plant one place,  
8 there's a circle around there, and that's the only  
9 place you can get a contract. And we're starting  
10 to see that a little bit in hogs, maybe not as  
11 much, but that's what's happened in poultry, and I  
12 think that that's a serious concern a lot of people  
13 have about contracts.

14 PHIL WEISER: Rachel, you want to add  
15 anything to this?

16 RACHEL GOODHUE: Sure. A couple of  
17 things here. I guess the first thing I will do is  
18 speak directly to Mary and Patrick for a moment.  
19 And in terms of contract choice and so on, I will  
20 come back to one of our earlier speakers previously  
21 who pointed out that he chose a contract, and  
22 certainly a contract is a question of what you get  
23 out of it, and I think to some extent what you're  
24 both talking about is there can be a big difference  
25 in negotiating power when you initially enter the



1 contract whereas what happens five years later, ten  
2 years later when the initial contract is up, and I  
3 just kind of wanted to draw that out.

4           Then the next thing I would say about  
5 this is two more comments. One about as the number  
6 of integrators goes down, and what I was thinking  
7 about is the California sugar beet industry, or  
8 maybe I should say the former California sugar beet  
9 industry, and it's true that we lost all the  
10 processors, but that's because they weren't making  
11 any money either, and so it's always a question of  
12 watching in a specific area if it's something about  
13 long-term trend in the industry versus decisions  
14 made by individual processors for their own  
15 reasons.

16           And then the other thing which is a  
17 bigger thought question for folks in the audience  
18 really, and some people may be on contracts that  
19 are like this, but I was just thinking about  
20 there's a lot of ways to peg price that don't  
21 involve spot price.

22           If you think about broilers, all the  
23 chickens are contracted or owned by the processors,  
24 so the question is, how do they set that contract  
25 price? They've got a different mechanism. And so

1     maybe one thing we might be seeing -- whether we  
2     want to see it or not, of course, depends on the  
3     specific contract terms but price determination  
4     mechanisms that are based on something other than a  
5     spot price that's perhaps increasingly  
6     unrepresentative of the price that producers in the  
7     industry as a whole are obtaining.

8                     So that's -- that might be something  
9     to think about for the future. If the spot market  
10    is unreliable, if there's not enough of a market  
11    for the transparency to be effective, then maybe  
12    other mechanisms need to be explored.

13                    PHIL WEISER: So I just want to  
14    underscore sort of in the call for further  
15    information and thoughts. Rachel's two great  
16    points, the first one involving what you might call  
17    a renewal contract situation and how to avoid what  
18    the comments called ex-post after-the-fact  
19    opportunism. Once someone is locked into a  
20    particular purchaser, how do you ensure that they  
21    are not taken full advantage of? If you maybe had  
22    the right arrangement at the front end of the  
23    contract that gave you some protection, that could  
24    help.

25                    Other industries -- electric power

1 comes to mind -- has regulations that deal with  
2 these sorts of situations.

3 The other point you made about other  
4 price setting other than relying on spot market.  
5 For those who have experienced knowledge as to  
6 those sorts of case studies, we really welcome  
7 them. That's valuable information for us.

8 Let me ask a question that came up to  
9 Chuck, and you can maybe respond. Others can  
10 respond. The feeling of a lack of power by  
11 producers begs the question, are there cooperatives  
12 that provide a mechanism to enable producers to  
13 come together as a way of essentially  
14 countervailing market power that can ensure a fair  
15 price for sellers?

16 The Congress has passed a law --  
17 you're probably well familiar with it -- the  
18 Capper-Volstead Act which provides an important and  
19 constructive role for cooperatives in the chain  
20 that we're talking about.

21 Is that a part of this picture, Chuck?  
22 Have you thought about does it work in your sector?  
23 I know other sectors may be more or less  
24 susceptible to cooperatives playing a role than  
25 others.

1                   CHUCK WIRTZ: There are. There's a  
2     marketing organization called Producers Livestock  
3     Marketing Association out of -- I believe it's  
4     Sioux City. They work with smaller producers  
5     trying to help them market their hogs.

6                   For the most part, if you can deliver  
7     a semi load of pigs, you can negotiate pigs  
8     because you pretty much have the ability to deliver  
9     a scale of pigs that a packer is willing to  
10    negotiate with you.

11                  I will tell you, though, that it is --  
12    it is true that the more loads you have to  
13    negotiate, the more willing they are to negotiate.  
14    I've had instances where I've offered two loads at  
15    a price or four loads at a higher price, and  
16    they'll take the four loads at a higher price  
17    versus if you didn't have the four loads when you  
18    got the higher price, so there is some of that  
19    going on.

20                  PHIL WEISER: That's the case for  
21    cooperatives, in other words.

22                  CHUCK WIRTZ: Right.

23                  PHIL WEISER: You can negotiate the  
24    amount you're selling.

25                  CHUCK WIRTZ: You can negotiate those.

1 The problem is, though, it's like I had a  
2 conversation with one of the buyers there this  
3 morning. Right now it's extremely difficult to  
4 market pigs because we had a fire at Logansport,  
5 Indiana, and there's such a delicate balance  
6 between supply and demand of hogs that that plant  
7 being down, every day that it's down, those pigs  
8 have to be killed somewhere else.

9 So there's a push of those pigs to the  
10 west, and counterly, we're having to deliver pigs  
11 from north central Iowa to Crete, Nebraska, to try  
12 and find -- we have to go west to find a packer  
13 that will kill our pigs because going east is  
14 getting inundated from these pigs coming from the  
15 east because of that fire, so it is a very delicate  
16 balance.

17 PHIL WEISER: Rachel, you want to jump  
18 in on that point?

19 RACHEL GOODHUE: I did because again,  
20 California has some instances of different cases  
21 like that as well in wine grapes, and this is an  
22 interesting case just because of the product, but  
23 because the industry is very differentiated,  
24 there's a producers' negotiating group called  
25 Allied Wine Grape Growers, and it will come in and

1 help members negotiate for their grapes, and more  
2 importantly, given some of the things we talked  
3 about with contract risk earlier, they assure.  
4 They assure each other as a group.

5 So if your buyer goes broke and you  
6 don't get your payments, then everybody has  
7 contributed into a pool so that you don't realize a  
8 zero return on that year's crop.

9 And another interesting case is  
10 processing tomatoes. There's no real spot market  
11 there. This is one of the industries that  
12 motivated my earlier comment, and what we have  
13 instead is an industry producer negotiation group,  
14 the California Tomato Growers Association, and they  
15 negotiate with the processor. Now, these are  
16 contract prices, but it's a very transparent  
17 negotiation process in terms of how the prices are  
18 settled and what the processors are paying for base  
19 price.

20 PHIL WEISER: So I want to go to  
21 another question that emerges from what Chuck just  
22 said, which is the amount of distance you have to  
23 ship because of the changing market structure. For  
24 some people -- and in Colorado we'll have a local  
25 producer of cattle who's related such a story --

1     it's maddening that they can actually produce  
2     cattle, let's say in this case in Colorado Springs.  
3     They want to ship it to Whole Foods, say, or other  
4     outlets that might be in Denver or Boulder, but in  
5     order to do that, they've got to ship their cattle  
6     down to Texas where the, you know, distribution  
7     facility is.

8                     And so that makes it a lot harder to  
9     have locally grown food, and it also makes it  
10    harder for people when they're buying food to know  
11    what truly is local. So we've referred to it  
12    before, and people have raised this issue about  
13    consumer awareness, and I think I heard Secretary  
14    Vilsack say that there's a real push to know your  
15    food, know your farmer.

16                    To what extent is there local  
17    awareness about where their food is coming from?  
18    Is it an advantage to be local? Do those markets  
19    exist? I think, Mary, said you want to start on  
20    that one?

21                    MARY HENDRICKSON: Yeah. Thank you.  
22    I think one of the issues you just raised about  
23    Colorado Springs to Texas is one of, again, Whole  
24    Foods is a very dominant player in the natural  
25    grocery sector; right? So there's very little

1 competition in some sense with Whole Foods.

2                   So what happened is we see these more  
3 national scale players create more national scale  
4 infrastructure, and so we have limited a lot of the  
5 infrastructure that used to exist for local --  
6 either it's processing facilities. It is local  
7 warehousing. It's packing and sorting facilities,  
8 all of these kinds of things that that  
9 infrastructure no longer exists.

10                   And you know, the argument is, how  
11 come it disappeared? Just simply because it was  
12 inefficient, or are there other reasons? And I  
13 think that's something to tease out. But that  
14 makes it very, very difficult as we start to see  
15 these local markets.

16                   So there's a very vibrant market, for  
17 instance, in farmer's markets. What have we got?  
18 Somewhere over 5,000 farmer's markets across the  
19 country. They're very competitive normally. The  
20 producers there are -- it's a very competitive  
21 market. Farmers really have to be on top of their  
22 game to do it. They're providing a lot of  
23 information to consumers and so on.

24                   But once you move out of that  
25 particular direct relationship between farmer and



1 consumer, then the infrastructure issues become  
2 really, really important. It's particularly  
3 difficult for meat vendors of any sort at the local  
4 level because of the costs. A local farmer at the  
5 market in Columbia, Missouri, for instances, says  
6 it's \$400 to slaughter his beef cattle at a  
7 small -- very small scale but actually medium scale  
8 for a USDA-inspected locker plant in Missouri  
9 versus, you know, some of the industry averages  
10 are, you know, probably closer to a quarter of  
11 that.

12                   And so that -- you know, part of that  
13 is because rendering is consolidated, so nobody can  
14 sell their by-products anymore. I mean there's a  
15 lot of issues that all play into that.

16                   So I think that those are some of the  
17 issues that we have to start thinking about at the  
18 local level, but that infrastructure, it becomes  
19 really apparent too as we go to a global scale, a  
20 lot of global players in the food system are at the  
21 global scale where there was a global retail  
22 sector. You know, there's a global trading sector  
23 in grades, and so that raises the question of what  
24 happens at the -- you know, if we've seen these  
25 changes from local to national scale, what happens

1     when we go to global scale?

2                     And finally I would say something that  
3     doesn't have anything to do with price and  
4     efficiency whatsoever but questions about  
5     redundancy and resiliency in the food system, and  
6     that's what I think a lot of folks in the local  
7     arena, it's not just a matter of trying to  
8     differentiate their price and -- or their products  
9     and get into new markets because they're frustrated  
10    with other markets when they see these as marketing  
11    opportunities, but there are some questions about  
12    societal goods, about, you know, if we have  
13    redundancy, that allows us to absorb more shocks.

14                    You have a highly concentrated system.  
15    It's much more difficult to absorb shocks, be they  
16    financial shocks or environmental shocks or what  
17    they are. So I think that redundancy and  
18    resiliency is another important thing to think  
19    about in terms of local markets and what kind of  
20    societal goods that they actually provide for  
21    people.

22                    PHIL WEISER: John, I want to segue  
23    back to something that a couple farmers said on the  
24    earlier panel, the role and the importance of niche  
25    players or specialty offerings. Local food could

1 be in that category.

2 Broadly speaking, how significant do  
3 you think this idea is of niche development, and is  
4 local for the food good example of that, of how to  
5 overcome the obstacles that Mary has talked about  
6 and what sorts, if any, policy responses are  
7 appropriate.

8 JOHN LAWRENCE: Well, and I've often  
9 used this quote, and I probably ought to look to  
10 see if it's factual or not, but I think one of  
11 Webster's definitions of niche is a small crevice  
12 and environment in which to hide.

13 Oftentimes that -- from a niche market  
14 standpoint, that's what you're trying to do, is  
15 find someplace so you don't have to compete on a  
16 commodity scale, that you're doing something  
17 unique, somehow differentiate that product, and  
18 whether it is by distance or how the animal is  
19 produced or the genetics of it or whatever it is,  
20 there's some distinguishing factor.

21 And then you have to have a market  
22 infrastructure or system that allows you to prove  
23 that differentiation because the flip side of it is  
24 protecting the consumer. All right? If suddenly  
25 there's a huge increase in interest in natural --

1 and there's no strong definition of natural. By  
2 golly, I'm international too. Pay me more money.  
3 Then you get into consumer fraud issues. And so  
4 how do you protect that?

5 And this is maybe popular in the trade  
6 industry, the local is the fastest growing or the  
7 hottest item in restaurants this year. But it's  
8 starting at a very small base, so back to your  
9 question. Is this a significant outlet?

10 I think you will find some individuals  
11 that can do very well. The Whole Foods and the  
12 natural beef and cow, whatever specs they had  
13 started out as a niche that some producers got  
14 into, but as a business, I'm assuming here, how do  
15 we get this national distribution? How do we do it  
16 cost effectively? It's having centralized packing  
17 plants and distribution systems, and so now  
18 suddenly we're back into transportation logistics.

19 Our commodity systems, that's one of  
20 the things we did very, very well is efficiency and  
21 logistics. You can run into some of the same  
22 pricing issues as you get into local and these  
23 niche markets. Oftentimes they're based off of the  
24 commodity price, so it's a premium to the  
25 commodity.

1 Farmer's markets, they may be more of  
2 a direct negotiation, but some of those same issues  
3 will follow you into those niches.

4 PHIL WEISER: Patrick, if I recall  
5 correctly, your comments talk a little bit about  
6 the experience in the organic sector which was  
7 developed off of certain regulations and what  
8 constitutes organic.

9 What did we learn from that, and more  
10 generally, what do you think of the promise of  
11 niche development, niches?

12 PATRICK WOODALL: I think this  
13 question really reflects the consolidation in the  
14 marketplace. And I think as you saw the number of  
15 cattle slaughter companies decline and the number  
16 of facilities decline, this kind of creates a  
17 barrier to industry. There's a classic  
18 consolidation impact on the marketplace. It  
19 creates a barrier to entry.

20 The capital cost of building a new  
21 slaughter facility and the barrier of finding  
22 supplies in a marketplace that's locked up by  
23 captive supply agreements creates a real difficulty  
24 and an impact and prevents -- effectively prevents  
25 a lot of reconstruction of these local

1 marketplaces.

2                   In organic, I think what we saw was  
3 the promise of a niche market that grew very, very  
4 quickly, and many small producers took advantage of  
5 that. They were quickly swamped in many respects  
6 by the giant food companies. Of the 30 biggest  
7 food companies, a third bought up organic brands  
8 within the first ten years, and half launched their  
9 own organic brands.

10                  And in organic milk producers, the  
11 organic dairy farms thought that they could kind of  
12 outrun the system, I think, for a long time and  
13 made a premium, but when the milk prices collapsed  
14 in 2007, the dairy milk prices came down faster and  
15 harder, and suddenly there was a very consolidated  
16 market where a very few buyers are buying organic  
17 milk from dairy farms, and they were especially  
18 squeezed and faced the dairy crisis harder and  
19 earlier than I think other dairy farmers did, which  
20 was quite terrible for all of them but earlier and  
21 worse for organics.

22                  PHIL WEISER: That note leads into my  
23 last question which I'll give to the panel for a  
24 minute or so. The question is twofold. One is, is  
25 it a marketplace today where farmers can start up

1 and compete on the merits and have a shot to make  
2 it? And to the extent there are barriers or  
3 impediments, what are they, and what, if anything,  
4 can policy do about that?

5 Brian, how do you size that up?

6 BRIAN BUHR: Well, we do know this  
7 conversation about niche markets is part of that.  
8 You know, it's from John's comment about the  
9 crevices is kind of enlightening because the larger  
10 commercial food chain which produces highly -- high  
11 quality, cost-effective food that feeds the nine  
12 million people we've heard about is sort of that  
13 piece that helps maintain that -- one producer  
14 earlier talked about they're cost driven. It  
15 maintains that cost-driven food system where you're  
16 trying to provide that which opens up those  
17 crevices. I mean it's literally that piece where  
18 when people make a choice to go to local, organic,  
19 or producers, those opportunities arise.

20 The ability to do that, I think one of  
21 the biggest issues is capital, which came up  
22 earlier. What we haven't talked much about is  
23 capital formation in these markets.

24 And then I think being on the merits  
25 make up the ability to enter -- you know, the

1 market barriers to entry issues, and the challenge  
2 today is even for relatively modest farm operations  
3 with land values what they are in Iowa now, 5,  
4 6,000 bucks down here. We don't know that in  
5 Minnesota yet.

6 But if you look at those types of  
7 barriers to entry, it's really difficult to get in,  
8 and the fact in agriculture is there are large  
9 economies to scale. So one of the issues that did  
10 come up earlier is, how do we finance agriculture?

11 And what's happening -- and we can  
12 talk about integrators being part of that financial  
13 model and of course, you know, linking with larger  
14 production firms to gaining access to capital.  
15 We're looking to farm credit systems that exists to  
16 provide access to capital. And all of those things  
17 help foster competition without putting necessarily  
18 market restrictions on. They're sort of  
19 facilitating aspects of this.

20 So that capital size is really  
21 important, and a piece of this that, I know, in  
22 Iowa and other places, it's very controversial, but  
23 you might as well say it, is the only access to  
24 capital in agriculture is primarily debt capital.  
25 And no other industry in the country, folks, is



1 primarily on debt capital. There's very little  
2 equity that can come into this industry outside.

3 And we get upset because it goes to  
4 the large producers and the large integrators,  
5 production companies, but for example, if you start  
6 a small organic company and look at cooperatives as  
7 an example of this, offering shares for people to  
8 buy into community situations, you're providing  
9 facilitation with capital in innovative ways,  
10 micro-lending of those aspects. Are there ways to  
11 create innovation into that market that does open  
12 up these channels?

13 And rather than blaming the big person  
14 for closing markets, we're not allowing the opening  
15 of people to get into these markets in many cases.  
16 So I keep saying facilitation, but I think that's  
17 where we need to look at. How do we form those  
18 necessary conditions to get capital in the markets?

19 PHIL WEISER: Rachel.

20 RACHEL GOODHUE: So certainly Brian  
21 brought up key points here, so I will just throw  
22 out a couple other things going back to John's  
23 earlier comments about niche markets. Finding a  
24 market and finding a market you can grow and keep  
25 from scratch isn't easy whether you're starting a

1 farm, business, or you're trying to redirect the  
2 one you have.

3 Certainly something like  
4 community-supported agriculture where you get  
5 customers to subscribe to the produce industry  
6 apparently can also work in the meat on a very  
7 small scale. That's one way of getting money into  
8 your business.

9 At the same time whether you're  
10 cultivating a direct market, we had an earlier  
11 comment about -- on an earlier panel about how much  
12 of the small scale stuff can really work, and  
13 that's a good question. By definition a niche is a  
14 niche. I don't know how many little crevices folks  
15 have to hide in in total.

16 The other thing that I will mention  
17 certainly that hasn't come up in this panel  
18 actually that much except for the gentleman from  
19 North Carolina earlier, which is certainly last  
20 night when I got here, my dad and my friend were at  
21 a pesticide training session, which I bet a lot of  
22 other people went to too, and regulatory compliance  
23 is a big cost.

24 California, I guess you could say  
25 we're the leader or in last place, depending on how

1     you feel, in terms of regulation of agriculture,  
2     and it's a huge concern. People spend a lot of  
3     time on it, and people spend a lot of money on it,  
4     and if you're starting from scratch, that's another  
5     big challenge that certainly hasn't been discussed  
6     a lot today, but it matters.

7                     Mary mentioned about environmental  
8     compliance. That's just one small piece of  
9     regulation of agriculture.

10                    MARY HENDRICKSON: If I could just  
11     build on what Rachel was just saying, I think that  
12     there are a couple of policy levers that aren't  
13     working very well for small scale growers, and this  
14     has to do with compliance issues around a  
15     regulatory infrastructure does not work very well  
16     for small scale, and often this regulatory  
17     infrastructure is really built for the larger scale  
18     that we've seen emerge in agriculture, and it  
19     doesn't work very well for small scale.

20                    And I would say this is particularly  
21     true around food safety governance, and you know,  
22     there's new rumblings about what's going to happen  
23     with food safety regulations. We're already seeing  
24     produce auctions in Missouri run primarily by, you  
25     know, Amish/Mennonite farmers and other farmers who

1     these are real open auctions for produce.

2                     We've seen those be impacted --  
3     perhaps this summer there's some fear about it  
4     because of good agriculture practices versus  
5     regulations which seems to be now compulsory for a  
6     lot of produce growers, so the way food safety  
7     governance happens, it's not very well thought out,  
8     and food safety governance is not going to be  
9     appropriate.

10                    The same kind of things is not going  
11     to be appropriate at all scales of production and  
12     consumption, and I think it's really important to  
13     think hard about how that happens so that we don't  
14     end up with some of the same issues we've had in  
15     terms of pesticide regulations or safety  
16     regulations and so on, and this is not to say  
17     regulation isn't useful and necessary. It's just  
18     to say that we have to think about what are the  
19     appropriate scales and how that works. And I think  
20     that's really important.

21                    And the last thing I would say too is  
22     that I think it's really important to think about  
23     these larger goals of, I mean, we're talking about  
24     issues of concern to farmers, but these are issues  
25     of concern to larger society as well on how our

1 landscape looks, and I think somebody on an earlier  
2 panel mentioned something about Iowa being kind of  
3 known for corn. Basically driving through, all you  
4 see is corn when this was a cornucopia of a number  
5 of different products, a number of different  
6 landscapes, you know, just maybe 40 years ago, 40,  
7 50 years ago, and so, you know, that has biological  
8 diversity complications. That has implications for  
9 wildlife, for water quality, for water quantity,  
10 all of these kinds of things.

11                   And I think that those things become  
12 very important to the issue we're addressing in  
13 consolidation and competition because of those  
14 larger societal goals that we can incur that are  
15 tightly linked to the industry structure.

16                   JOHN LAWRENCE: I think the question  
17 was in getting started, and I think it's always  
18 been difficult to get started in agriculture. I  
19 think back to when I was growing up and people I  
20 knew that worked the night shift someplace but  
21 farmed during the daytime. That continues today.

22                   We talked about part-time farmers. To  
23 me they've been farming full-time, and they've gone  
24 back to a job, so I understand the difficulty.

25                   The capital it takes -- and Brian

1     talked about this. We often talked about the way  
2     you get capital is either you're born into it or  
3     you marry into it. The interest is a little higher  
4     on one of those than the other.

5                     The other role that was mentioned  
6     earlier is the role that contracts have played or  
7     integrators have played in helping to secure some  
8     of those loans. If I don't have a section of  
9     Grandpa's land behind me but I have a contract, am  
10    I able to access them?

11                    The contract risk that was mentioned  
12    is quite real. So they're going to investigate  
13    what's the integrity or the stayability of the  
14    company behind it?

15                    But beyond conventional agriculture,  
16    doing what we've done or what Dad did, we see a lot  
17    of interest. We hear it. It's in the press a lot.  
18    We have meetings, and there's a lot of interest  
19    that's featured in the newspapers. How many  
20    numbers it actually is, I'm not sure of the smaller  
21    farmers, whether it's the welfare-friendly pork  
22    like Neiman Ranch has 400-plus growers and the  
23    welfare-friendly situation that's much lower  
24    capital than conventional production. Some of the  
25    farmer's markets are high labor produce-type

1 things, I think is providing some opportunities  
2 that were maybe there 50 years ago, weren't there  
3 10 years ago, and are beginning to evolve some  
4 today.

5 PHIL WEISER: Chuck, the question for  
6 you is, would you encourage your kids to go into  
7 this, and if there are impediments there, what are  
8 they?

9 CHUCK WIRTZ: I wish -- I have two  
10 boys in college, and I don't think either one of  
11 them are going to come back to farm, and that's  
12 unfortunate. I mean I knew when I was in high  
13 school, that's what I wanted to do when I wore a  
14 blue coat. I knew I was not going to go to  
15 college, and I was a good student. I got straight  
16 A's in school, but I just knew I wanted to farm. I  
17 lived, breathed, eat, sleep, drove on the tractor,  
18 sat on the fender. I'm sure it wasn't safe, but I  
19 never fell off and got ran over.

20 I mean, you know, it was just a  
21 different world back then. I mean you grew up. It  
22 was just a love affair with farming. You just  
23 loved to do it. And it's challenging, and you  
24 know, that's why I'm so passionate about trying to  
25 preserve a marketplace, and I think as an industry,

1 as a pork industry, we recognize that we don't have  
2 enough pigs being openly negotiated, and we're  
3 going to try and address that. We get a little  
4 concerned when the government is going to come in  
5 and mandate that.

6 I have -- one of the first confinement  
7 barns I built was built with a contract. I was  
8 able to walk into the bank, and the bank would lend  
9 me the money because of the strength of the  
10 contract, and that enabled me to expand my hog  
11 operation, to take it to the next level, so there's  
12 a place for that.

13 But if we want to preserve the  
14 marketplace, we have to preserve a negotiated --  
15 you know, you talk about having price set on  
16 something else, and different people have talked  
17 about, well, let's set the price based on the  
18 carcass cutout. Farmers don't operate in that  
19 market. We don't negotiate it. We don't produce a  
20 carcass. We produce a pig, so we have to have  
21 price discovery in a live pig arena in order for us  
22 to negotiate in that.

23 If we lose that market, I'll even have  
24 a harder time convincing my sons to come back on  
25 the farm. But I do have a seventh grader that



1 likes to ride the tractor with me and likes to be  
2 out there, and he's my exit strategy.

3 PHIL WEISER: Patrick, you started the  
4 discussion off, if you want the last word, anything  
5 else to add.

6 PATRICK WOODALL: I think that  
7 question is the question that all farmers have  
8 heard today asked, which is, is this something I  
9 would recommend my kids do? And I think many of  
10 them say that, you know, in a very concentrated  
11 marketplace, it's really difficult, and that's why  
12 USDA is so interested in figuring out how to  
13 leverage more tools for rural development because  
14 it's harder now, I think, for farmers to make it in  
15 a marketplace where there are very few buyers, and  
16 it's difficult to make ends meet.

17 And that question that you see today,  
18 and I think you'll see it at the end of the day is,  
19 what is the role of consolidation and that question  
20 on an intergenerational challenge for farming in  
21 America, and that's important.

22 PHIL WEISER: We'll take a break until  
23 3:30. We'll hear from the enforcers and come back  
24 from anyone else here who wants to be heard. Thank  
25 you all for a great discussion.

1 (Short recess.)

2 MARK TOBEY: All right. I think we're  
3 going to get started now. If we could get your  
4 attention, we're going to start the enforcers'  
5 panel, and since we're enforcers, you'd better pay  
6 attention.

7 Well, thank you all for coming today.  
8 We have this last panel, the enforcers' panel,  
9 which it is my pleasure to be the moderator of. My  
10 name is Mark Tobey. I am the relatively new  
11 agriculture counsel at the Department of Justice  
12 antitrust division.

13 Actually, there are two pieces to my  
14 job. One is state relations, and one is  
15 agriculture, so with this panel of state attorneys  
16 general and my federal counterparts who do  
17 agriculture work, I mean it doesn't get any better  
18 than that for me, and so we're very pleased today  
19 to be able to talk about the enforcement landscape  
20 in agriculture and antitrust and add into that  
21 commodities regulation.

22 And we have today with us three  
23 attorneys general that I'm very pleased to have  
24 gotten to know a little bit. Two of these fine  
25 gentlemen are part of the antitrust committee that

1 interfaces with the U.S. Department of Justice and  
2 the Federal Trade Commission, and then General  
3 Bullock from Montana has been very involved in the  
4 agriculture aspects of the attorney general --  
5 attorneys general's work.

6               So we have the attorney general of  
7 Montana, Steve Bullock, and we will go through one  
8 by one -- this panel is a little bit different from  
9 the ones that you just heard. This will be more of  
10 a statement talking about work in the agriculture  
11 and enforcement area. We'll go one by one through  
12 the panel.

13              Then after everyone has made their  
14 statements, we'll have a little bit of a  
15 discussion, and then we will take questions in the  
16 same manner in which we've done it before, which is  
17 that please write your questions, and we'll have  
18 the FFA volunteers come and get your questions, and  
19 toward the end of the panel, we'll see -- I'll look  
20 through them and see if there's anything that we  
21 can address with this panel.

22              I'm going to say off the bat, because  
23 maybe these folks would not want to say it, we're  
24 all enforcers. We all have investigations or cases  
25 that we can't talk about. That's one reason why we

1 have to do the presentations the way that we're  
2 doing it. Now, I apologize in advance. Maybe some  
3 of the questions will actually go to matters that  
4 we can't talk about. It isn't that we're trying to  
5 hide the ball. It's just that that is the way that  
6 these investigations have to be conducted.

7                   So let me start by introducing with  
8 great pleasure Steve Bullock, the attorney general  
9 of Montana. Steve was elected as Montana's 20th  
10 attorney general in November of 2008. His career  
11 in public service began as chief counsel to the  
12 Montana secretary of state. He went on to serve  
13 for four years with the Montana Department of  
14 Justice, first as an executive assistant attorney  
15 general and then as the active chief deputy in  
16 Montana.

17                   He also served as the attorney  
18 general's legislative director from 2001 to 2004,  
19 and he practiced law in Washington, D.C. at Steptoe  
20 & Johnson, and he served as an adjunct professor at  
21 my alma mater, George Washington University School  
22 of Law.

23                   Prior to his election in Montana, he  
24 worked in private practice in Helena, and he was  
25 born in Montana and graduated from high school in

1 public schools in Montana and got his degree from  
2 Claremont McKenna and his law degree from Columbia  
3 Law School. So Steve.

4 ATTORNEY GENERAL STEVE BULLOCK:

5 Thanks, Mark. And on my -- behalf of myself and  
6 the other panelists, I'd like to thank the  
7 Department of Justice and USDA and their dedicated  
8 staff for pulling this together today. I think  
9 we've all learned a lot, and it wouldn't have been  
10 possible without the hard work from folks like you,  
11 Mark.

12 In 1999 I was an assistant attorney  
13 general with the Montana Department of Justice, and  
14 I had the opportunity to provide testimony to the  
15 senate commerce committee. At that time the  
16 committee was grappling with the issues of how  
17 mergers in the agriculture industry had affected  
18 consumers.

19 The following year in Colorado, the  
20 USDA convened a summit to discuss livestock and  
21 grain issues. State and federal governmental  
22 regulators came together to discuss the vexing  
23 issues surrounding market concentration and its  
24 impact on consumers and producers.

25 In many respects it's deja vu all over

1 again. Everything I testified about a decade ago,  
2 highly concentrated markets, potential abuse of  
3 market power, to harm both producers and consumers,  
4 the need for greater market transparency, and a  
5 plea for greater coordination effort in regulation  
6 enforcement, it's as true today, if not more so.

7               So on the one hand, I think that  
8 there's reason for skepticism and indeed pessimism.  
9 Yet fast-forwarding a decade plus later, there are  
10 bright spots on the horizon. Within two months  
11 from my coming into office last year, JBS National  
12 called off its proposed merger. The merger  
13 threatened to combine the world's largest beef  
14 packer with the nation's fourth largest,  
15 concentrating over 80 percent of the nation's  
16 capacity in just three firms that threatened to  
17 both reduce demand for ranchers and now for the  
18 consumers.

19              And when you think about it, it's  
20 unlikely that their decision to walk away from that  
21 proposed transaction was attributable just to a  
22 change of heart. It was the result of the United  
23 States Department of Justice and 16 states joining  
24 hand in hand to stop it, having filed suit to block  
25 that merger four months prior.

1                   Another bright spot is the fact that  
2   this workshop is even being held today. As I  
3   mentioned earlier, certainly not the first time  
4   that regulators have gathered together to learn  
5   about and discuss these concerns, but I imagine it  
6   is the first time that the United States attorney  
7   general and the United States secretary of  
8   agriculture and this many AGs and others have come  
9   together.

10                  And that's as it should be because  
11   it's not just about a rural way of life or clinging  
12   to some nostalgic past. It's just practical. It's  
13   about ensuring the competitiveness of agricultural  
14   markets for all of our states. America's rural and  
15   urban economies absolutely depend on each other.  
16   The rural economy has often been the barometer of  
17   the nation's economy as a whole, and when rural  
18   America is suffering, we can expect the nation's  
19   economy to suffer as well.

20                  Agriculture ranks as one of the top  
21   sectors in most of our state economies. And while  
22   the agriculture heritage of all of our states  
23   differs, sometimes dramatically, the concerns about  
24   market concentrations, transparency, and effective  
25   regulation can cross geographical boundaries and

1     their shared concerns irrespective of the crops we  
2     produce and the animals that we raise.

3                 For example, in Montana we don't have  
4     the significant corn, soybean, or hog production  
5     that you find in the Midwest and here in Iowa, but  
6     agriculture is still my state's largest industry.  
7     In Montana our dominant ag commodities are beef  
8     cattle and wheat and barley with a value of crop  
9     and livestock production about \$3 billion in 2008.  
10    And the economic health of our one million  
11    Montanans is inextricably intertwined with the  
12    economic health of our agriculture economy.

13                The changes in those industries that  
14    influence our farmers and ranchers over the past  
15    decade, it really has changed the face of  
16    agriculture itself. For example, in 1984 the  
17    Montana landscape was dotted with almost 200 grain  
18    elevators. Today there's less than 50 even as  
19    production has risen.

20                Nationwide, as we heard, the top four  
21    beef packers process about 85 percent of our beef  
22    and the top four pork packers, around 65 percent of  
23    the pork. Just a handful of multinationals now  
24    dominate the seed and trait industry.

25                Overlaying all this, we have a rail



1 transportation system that our grandparents could  
2 not have comprehended at this point. In 1930 there  
3 were over 130 Class I railroads. Today there are  
4 seven. Four of those seven control over 95 percent  
5 of ton miles hauled in the United States.

6           Yesterday the states -- 14 so far have  
7 signed on, and we submitted comments from the  
8 states' perspective, the state AGs' intent to serve  
9 as the starting point to help frame this discussion  
10 as we go forward. Yeah, we also know that there's  
11 a lot more to be done. There's going to be a  
12 number of workshops. Those comments covered more  
13 than just seeds or seeds and hogs, and I think that  
14 they squarely address many of the issues that we're  
15 grappling with today.

16           For seeds, the issues that the seed  
17 industry face are incredibly complex. They do  
18 require a thorough understanding of not just  
19 antitrust jurisprudence or law but also of  
20 intellectual property laws and the way that these  
21 two areas rely on, and the DOJ and USDA should  
22 explore the concerns that have been raised  
23 considering whether there's basis for changes in  
24 policies in existing law.

25           And for dairy the Capper-Volstead Act,

1 the current milk pricing schemes under the  
2 agriculture marketing agreement, need be reviewed  
3 to ensure that they can continue to protect and  
4 benefit dairy farmers as originally intended.

5 And for the meat industry, the USDA  
6 and the DOJ should explore legislative or  
7 regulatory revisions that will ensure compliance  
8 with the Packers and Stockyards Act; specifically  
9 whether it would be available -- or would be  
10 valuable to adopt rules that regulate captive  
11 supply and procurement matters. Further, we should  
12 explore to what extent state involvement would  
13 potentially benefit enforcement of the PSA.

14 And on an earlier panel, Iowa Attorney  
15 General Tom Miller made that offer to Christine  
16 Varney and the secretary, and that's an offer that  
17 we take seriously because we found that when the  
18 states and the federal government are working  
19 together, we can typically get much more done.

20 When it comes to rail, our comments  
21 that we submitted spell out our support of  
22 legislation that will reform the framework and  
23 functions of the Surface Transportation Board and  
24 legislation that would repeal the outdated  
25 antitrust exemptions that railroads have reaped the

1     benefits of for so long. The legislation would  
2     simply bring railroads under the same rules as  
3     almost every other business must follow.

4                 Frankly, we're not going to be able to  
5     turn back the hands of time. Enforcers can't open  
6     up state-sponsored packing plants. I can't go back  
7     to Montana and start my own Class I railroad.  
8     Rather, I think that our role is ultimately to  
9     ensure that any additional consolidation or  
10    integration in the agriculture sector does not  
11    occur without a critical and coordinated review.

12                Our role is that there is a regulatory  
13    framework to fill some of the gaping holes that  
14    exist and that where there are potential market  
15    failures, actual or perceived, we vigorously  
16    investigate and, when appropriate, enforce our  
17    laws.

18                And most critically as enforcers, our  
19    role is to work together. I for one think that  
20    these workshops are a productive first step in  
21    understanding the issues that face many of our  
22    producers every day. I've heard from farmers and  
23    ranchers in my home state that they feel like this  
24    has been a long time coming.

25                But I hope that we can all agree that

1     these workshops, even if they have been a long time  
2     coming, present both the opportunity and a promise  
3     to a renewed commitment.  Thanks so much.

4                   MARK TOBEY:  Thank you, Attorney  
5     General Bullock.  Now we will hear from Attorney  
6     General Chris Koster of Missouri.  Chris Koster was  
7     sworn in as the 41st attorney general of the State  
8     of Missouri in 2009.  From 2004 to 2008 Mr. Koster  
9     represented the 31st district in the Missouri  
10    Senate and contributed to debate over a number of  
11    interesting topics like stem cell research, tort  
12    reform, and the elimination of Medicaid fraud.

13                   Prior to his election to the Missouri  
14    Senate, Mr. Koster served as county prosecutor and  
15    prosecuting attorney in a small rural county called  
16    Cass County in Missouri.  He also practiced law in  
17    a Kansas City law firm, Husch, Blackwell & Sanders,  
18    and served as an assistant attorney general in  
19    Missouri from 1991 to 1993.

20                   He was born in St. Louis.  He received  
21    his degree from the University of Missouri and his  
22    law degree from the University of Missouri School  
23    of Law.  In addition, he has an MBA from Washington  
24    University in St. Louis.  Attorney General Chris  
25    Koster.

1                   ATTORNEY GENERAL CHRIS KOSTER: Thank  
2     you and good afternoon, everyone. It's been an  
3     extraordinary day in a lot of ways. One, it's the  
4     first antitrust conference I've ever attended where  
5     there are 800 people in the audience who aren't  
6     scrambling to file their CLE hours with the local  
7     bar.

8                   AGs, particularly AGs in the Midwest,  
9     of course, have historically been involved in  
10    agricultural issues, although outside of the  
11    antitrust area typically. In Missouri as in Iowa,  
12    I think, CAFO production is a -- probably three of  
13    the top five cases in my office in Missouri revolve  
14    around CAFO production and the controversies that  
15    accompany those all over the country. So  
16    agriculture is always in the top of every  
17    Midwestern AG's mind.

18                  But we're also involved in the  
19    takeover of grain facilities that have been subject  
20    to Ponzi schemes in recent years, licensing of  
21    agricultural production, typical environmental  
22    cases, groundwater runoff and the like.

23                  And then moving into the antitrust  
24    area, Missouri as in many of the states here  
25    represented were involved in the Zeneca case

1 recently as well as the American Cyanamid case.

2 I've only been on the job at Missouri  
3 for about -- coming up on a year and a half, but  
4 right as soon as we walked in the door, the  
5 antitrust issues that are symbolized by today's  
6 conference were really front and center and remain  
7 a topic of almost constant discussion between  
8 attorneys general around the country.

9 I come here in kind of an odd dual  
10 role. As the attorney general from Missouri, I  
11 come from the state that houses and is home to many  
12 important companies in this area, including one  
13 that is a topic of constant discussion. Along with  
14 Rich Cordray, the attorney general to my left, your  
15 right, I also am cochair of the National  
16 Association of Attorneys General antitrust working  
17 group. And so no matter which hat I happen to be  
18 wearing, Missouri wants to be at the table.  
19 Whether that table is set here in the Midwest or is  
20 set at the Justice Department or anywhere else in  
21 the country, Missouri wants to be at the table as  
22 these things are decided and I think has a special  
23 interest in that regard.

24 What do attorneys general think about  
25 when they think about these ag issues that we have

1 discussed today? Well, we have our historic and  
2 traditional role, which is to use the antitrust  
3 laws and, importantly, the consumer protection laws  
4 to protect against abusive contractual language and  
5 to guard against anticompetitive behavior that  
6 unnaturally extends patents.

7 In the antitrust working group that  
8 General Cordray and I work on, we also act as a  
9 supporting organization to one degree or another,  
10 however you want to phrase it, to the Department of  
11 Justice in their analysis of market definition and  
12 in their fact-finding efforts.

13 We serve as a local eyes and ears to  
14 the Department of Justice as they think through --  
15 as Christine Varney's organization thinks through  
16 the difficult questions that have been raised here  
17 today, and then at the end of that analysis, we  
18 either have the ability to act in concert with the  
19 Department of Justice or to go in our own  
20 direction.

21 Speaking for myself, there's a third  
22 principle that I try to advance as we all discuss  
23 these issues, and that is the principle of bringing  
24 some finality to these issues. Again, speaking  
25 only for myself, I don't think that these

1 discussions should go on endlessly. People on  
2 either side of these complicated and complex issues  
3 deserve answers to their questions, and so while  
4 the antitrust working group and all of us  
5 individually as antitrust enforcers have an ongoing  
6 responsibility to monitor the anticompetitive  
7 behavior that is occurring in the agricultural  
8 sector to the extent that it is and that is an  
9 ongoing effort, bringing finality to discreet and  
10 individual decisions so that companies and  
11 interested parties are simply not left for years  
12 wondering what is going on, I think, is a principle  
13 that to a large degree we agree among ourselves on  
14 and try to advance.

15               These are complex issues that haven't  
16 been said, and there's no date certain we can offer  
17 as we think through difficult problems, but we  
18 don't want to think through them forever.

19               One other aspect that strikes me as  
20 interesting is the role that private litigation  
21 plays in these questions. To draw an analogy to  
22 the computer arena, you have the litigation going  
23 on in Delaware right now between Intel and AMD, and  
24 they are a private party-on-party litigation, piece  
25 of litigation, that is occurring in that state.



1 And so I think in general terms, attorneys general  
2 look at those questions -- look at that litigation  
3 and wonder, are the antitrust issues in private  
4 litigation framed correctly?

5 And additionally, to what extent would  
6 regulatory involvement with the public sector  
7 getting involved in those cases, either as an  
8 intervening party or as someone who is bringing  
9 separate litigation as occurred in that case in  
10 Delaware where the State of New York actually left  
11 New York to file their cases in the court in  
12 Delaware, does public -- is the public interest  
13 advanced by a separate piece of litigation?

14 Those are all things that we think  
15 about because when two major parties are privately  
16 litigating, their interests are represented, but  
17 who is in the process to represent the public's  
18 interest?

19 One question that could arise  
20 theoretically as we go down the line in the private  
21 litigation that is occurring in St. Louis in Judge  
22 Webber's court in the seed issue between Monsanto  
23 and Pioneer is when that litigation proceeds to a  
24 point where the antitrust questions that are at  
25 issue there are decided in one way or another, if

1 the antitrust issues are decided so that the  
2 questions remain and are allowed to go to trial and  
3 become live questions, then I would think that a  
4 lot of parties, both at the state level and perhaps  
5 at the federal level, are going to look at that and  
6 ask the question, are the public interests being  
7 adequately represented as that table is set?

8 And I would think that different  
9 states and different interests would want to make  
10 their voice heard at some point were that question  
11 to go live in St. Louis, if it ever goes live in  
12 St. Louis in that litigation sometime over the next  
13 year. So those are my thoughts. Rich.

14 MARK TOBEY: Thank you, General  
15 Koster. Next we will have Attorney General Richard  
16 Cordray of the State of Ohio. Richard Cordray was  
17 elected Ohio's attorney general in November of  
18 2008. He previously served as Ohio's treasurer and  
19 as treasurer of Franklin County, as a state  
20 representative, and as Ohio's first solicitor  
21 general.

22 In these various positions, Attorney  
23 General Cordray has been dedicated to the value of  
24 community service. In 2003 he received the  
25 Presidential Service Award from the Ohio Legal

1 Assistants Foundation, and in 2000 the Human Rights  
2 Campaign named him humanitarian of the year for his  
3 efforts promoting tolerance and understanding in  
4 communities.

5 General Cordray earned his master's  
6 degree with first class honors from Oxford  
7 University and graduated from the University of  
8 Chicago Law School where he was editor of the Law  
9 Review. He lives in Grove City in Ohio, and my  
10 favorite factoid about General Cordray is that his  
11 earliest claim to fame was as an undefeated  
12 five-time champion on Jeopardy. General Cordray.

13 ATTORNEY GENERAL RICHARD CORDRAY:

14 That's just a little something to wake you up with.  
15 I want to first of all express my appreciation -- I  
16 know of my colleagues, all three of us are  
17 relatively new state attorneys general -- to your  
18 attorney general here, Tom Miller. He is widely  
19 respected, perhaps the most respected attorney  
20 general on both sides of the aisle in our National  
21 Association of Attorneys General, and it is due to  
22 his efforts in particular that this forum is going  
23 forth here in Iowa, and it's because of the respect  
24 and esteem in which he's held that you had such  
25 strong participation. It didn't start out this

1 way, but it ended up with the United States  
2 attorney general coming today, the head of the  
3 antitrust division, Christine Varney who I know has  
4 impressed many of you as she impresses us, and of  
5 course, your home secretary of agriculture, Tom  
6 Vilsack, but Tom Miller really commands great  
7 respect. And for those of you who are Iowans, of  
8 course we say in the Big Ten Hawkeyes, I hope you  
9 appreciate what he does for the people of this  
10 state.

11 I also want to say that one of the  
12 things that we bring to the table as state  
13 antitrust enforcers and state attorneys general is  
14 that we bring an intimate knowledge of our states  
15 to bear, and that's both of our constituencies in  
16 the states and geographies of our states, of the  
17 economies of our states, and I think that that's  
18 the way in which we fill a role in joint federal/  
19 state antitrust enforcement. We have a tremendous  
20 amount of experience. We have networks. We have  
21 relationships of the kind that federal officials  
22 could never possibly have in the 50 states of the  
23 union.

24 And I wanted to talk just a little bit  
25 about my home state of Ohio and our agricultural

1 sector, which as Steve said, has said in Montana,  
2 we have been saying for years in Ohio that  
3 agriculture is our No. 1 industry, and that's  
4 despite the fact that Ohio is a substantially  
5 industrial state. We have a tremendous amount of  
6 auto production, steel. We've had rubber. We've  
7 had glass and the like. But agriculture is, was,  
8 and remains our No. 1 industry.

9               What kind of agriculture do we have?  
10 We have a real blend. We're not as specialized as  
11 some states are, so we have, you know, an interest  
12 in a great number of the issues that have been  
13 brought to bear today. We have a dairy industry in  
14 the state. We have a wine industry. Did you know  
15 that there's an Ohio wine industry? I bet you  
16 didn't know that. We have one up toward Lake Erie  
17 on the northeastern side.

18              In livestock we have cattle. We have  
19 substantial pork production. We have poultry and  
20 we have eggs. We also have substantial grain  
21 production, mostly corn and soybeans. Those are  
22 our leading crops, but we have wheat and other  
23 things as well.

24              We have fish farms in the state, and  
25 we border on Lake Erie, and we have a very

1 substantial fishing industry that comes out of Lake  
2 Erie in particular, and we have substantial hunting  
3 for personal consumption in our state, so we really  
4 have a broad array of agriculture plus, I guess I  
5 would call it, and we're interested in many of  
6 these issues.

7           Among the things that have been talked  
8 about and touched on today, and they are touched on  
9 in more detail in the comments that Steve Bullock  
10 and others but Steve took the lead in putting  
11 together that we have submitted this week, we are  
12 very interested in the railroad antitrust immunity  
13 issues. We have been pressing Congress to repeal  
14 the antitrust immunity for the railroads because of  
15 the concentration that Steve mentioned which we  
16 think hurts our grain industry because they're so  
17 captive to the costs of transporting that.

18           We are concerned about, although --  
19 and I would echo what Steve and Chris have said.  
20 There are certain advancements that happened, and  
21 there's no reversing them -- the vertical  
22 integration in our pork production and our poultry  
23 production. We have the so-called factory farms or  
24 mega-farms. There's different terminologies in  
25 different places in Ohio, some of them foreign

1 owned, that are very substantial operations.

2 And we have a 15.8 million chicken  
3 facility northwest of Columbus. Those pose special  
4 problems. There may be antitrust issues there;  
5 there may not be. I mean part of the issue is that  
6 with vertical integration come great efficiencies,  
7 and if we're competing in a worldwide market, maybe  
8 we need those efficiencies, but it also can  
9 foreclose competition, can restrict choice, can  
10 affect prices.

11 And part of what the state attorneys  
12 general can do in antitrust enforcement is give a  
13 more intimate window, a closer, more detailed  
14 window into how those things actually are playing  
15 out in different local markets around the country,  
16 which is valuable information for our federal  
17 cohorts to have. But those also pose nonantitrust  
18 issues but very significant issues.

19 We have big environmental issues in  
20 our state with some of the mega-farms. And there's  
21 been battles over who should be regulating them,  
22 whether it's the Ohio EPA or the Ohio Department of  
23 Agriculture, and those are ongoing issues in our  
24 state.

25 I would also say that right now I

1 think -- and this was mentioned earlier today, and  
2 I picked up my ears because I've seen it in our  
3 state too. We have significant financing issues  
4 with respect to the agriculture sector, just as we  
5 have significant financing issues right now with  
6 respect to pretty much all of our businesses  
7 because of the credit crunch and the financial  
8 crisis that came upon us in 2008-2009. We have had  
9 that concern.

10               We have in the state of Ohio -- when I  
11 was the state treasurer, I operated -- there was a  
12 low interest loan interest rate reduction program  
13 for agriculture, but for our farmers to be able to  
14 continue to access loans and to be able to do it in  
15 ways that is not going to bankrupt them and at  
16 interest rates that are affordable and having  
17 access to the capital and have the collateral not  
18 be called and reassessed in ways that are in some  
19 cases unreasonable and may well be unfair is a very  
20 great concern for our farmers in Ohio right now.

21               Another interesting aspect of  
22 agriculture in Ohio since we are big in corn and  
23 soybeans is the increasing overlap between our  
24 agricultural industry and our alternative energy --  
25 embryonic alternative industry in the state which



1 is something that we are encouraging, subsidizing,  
2 and incentivizing very substantially, and I think  
3 that's true of many states, certainly a lot of  
4 Midwestern states, and so you have issues there of  
5 how does it affect the economics of agriculture to  
6 have tremendous subsidization and incentives not  
7 only for us but also in the stimulus money that's  
8 coming down from the federal government now.

9           It's certainly been a boost for our  
10 agriculture sector, but it's also affecting then  
11 input prices for livestock and other things. You  
12 know, there's just many different intimate  
13 connections among markets, and these are all issues  
14 for us.

15           I would close by just saying that  
16 there's different models of federalism and how  
17 federal and state officials can cooperate. The  
18 least attractive model for us is where the states  
19 are regarded as in effect field offices of the  
20 federal government. There are areas where that is  
21 maybe illustrative and an accurate description of  
22 the relationship. Not really true in this sector,  
23 I would think.

24           There's also the argument that states  
25 can be laboratories of federalism where we can

1 experiment with different approaches. That's maybe  
2 to a limited degree true here, but our markets here  
3 have become national and international, so that's  
4 really less relevant to the point.

5 To me the right model here is one of  
6 cooperative federalism where we and the federal  
7 government are working together, really pursuing  
8 the same ends with the same objectives. We bring  
9 some different talents and resources to the table,  
10 but if we can work arm in arm -- and that certainly  
11 has been the experience I've had. I've just been  
12 attorney general for 14 months, and it has been a  
13 great relationship between the federal enforcers at  
14 DOJ, the Federal Trade Commission, here with the  
15 Department of Agriculture, and the states.

16 I am told by those who have been  
17 around longer that it certainly wasn't always that  
18 way and wasn't even that way very recently. So I'm  
19 especially appreciative of the relationship we've  
20 forged with this administration because it does  
21 help us both do our work effectively and be of  
22 assistance to the federal officials as they try to  
23 do their work effectively and the power to convene  
24 groups like this in a setting like this -- and I  
25 know they're doing it across the country this year

1 and working with state attorneys general to do  
2 that -- is, I think, especially helpful because try  
3 as we might, as well as we think we know our  
4 states, those of us who are elected attorneys  
5 general, we drive the highways and byways. We're  
6 in every corner of the state. We're meeting with  
7 all kinds of constituencies. There's always more  
8 for us to know.

9 I think that's why God gave us MPs,  
10 but in between MPs we can have workshops, and so we  
11 will continue to do that, and we appreciate being  
12 here with our partners. Thank you very much.

13 MARK TOBEY: Thank you very much,  
14 General Cordray. And you mentioned that -- your  
15 colleagues mentioned the comments and the comment  
16 process. You all have filed comments. I've been  
17 in and out of the conference over the last few  
18 hours, and I don't know if it's been mentioned, but  
19 every comment, all 15,660-some odd comments that  
20 the Department of Justice and the United States  
21 Department of Agriculture have received, are now  
22 posted on the Department of Justice website, and  
23 they're accessible over the Web, and we intend to  
24 continue that process, and we will have the state  
25 attorneys general's comments up there as soon as

1 possible.

2 Now we turn to the federal component  
3 of the enforcement landscape, and we're very  
4 pleased to have the fine representatives of the  
5 important constituent agencies in that enforcement  
6 landscape. We'll hear from Steve Obie, Stephen  
7 Obie, who is the director of the division of  
8 enforcement at the Commodity Futures Trading  
9 Commission. We'll hear from John Ferrell who is  
10 with the U.S. Department of Agriculture and  
11 oversees three very important agencies at USDA, and  
12 we'll hear from Bill Stallings who is kind of in  
13 some ways the chief agricultural enforcement in the  
14 antitrust division. He's shaking his head but --

15 WILLIAM STALLINGS: I'm the assistant  
16 chief.

17 MARK TOBEY: I just said in some ways.  
18 Certainly the go-to guy for me. So anyway, we'll  
19 start with Stephen Obie. Stephen Obie is the  
20 director of the division of enforcement at the  
21 Commodity Futures Trading Commission.

22 Mr. Obie joined the CFTC in 1998 as a  
23 senior trial attorney in the New York office. And  
24 he received his law degree cum laude in 1991 from  
25 SUNY Buffalo School of Law and his B.A. summa cum

1     laude -- I didn't do any of those things -- from  
2     Drew University.

3                     After law school he clerked for  
4     federal court, court of claims, and the office of  
5     staff attorneys at the Eighth Circuit. Prior to  
6     joining the CFTC, Mr. Obie was a litigator at  
7     Fried, Frank, and he was also an adjunct professor  
8     and taught a course at Brooklyn Law School called  
9     trading derivatives. Stephen Obie.

10                    STEPHEN OBIE: Thanks a lot, Mark. I  
11     really appreciate the opportunity to be here, and I  
12     appreciate that so many of you have hung in. The  
13     CFTC's mission -- we're about 600 people. We're  
14     one of the smallest of the federal agencies -- as  
15     you may know, is to protect market users and the  
16     public from fraud and manipulation and abusive  
17     practices related to the sale of commodities and  
18     financial futures and options.

19                    And our other mission is to foster an  
20     open, competitive, and financially sound futures  
21     and options markets, and in support of that  
22     mission, we conduct active surveillance of the  
23     commodities futures markets, including the markets  
24     in which many members of this audience participate.  
25     And when we find wrongdoing, the CFTC's enforcement

1 division is committed to ensuring that enforcement  
2 of the commodity laws is addressed through civil,  
3 criminal, and administrative actions by federal and  
4 state agencies wherever possible, including the  
5 state attorneys general who are up here today.

6           The agricultural futures markets  
7 provide two vital functions. First, futures  
8 markets act as a venue for price discovery, and  
9 futures market prices can and often do act as  
10 references for pricing of cash market transactions.  
11 Second, futures markets provide a means of price  
12 risk management. For those who choose to use  
13 futures markets for risk management, contracts can  
14 be bought or sold to lock in prices or to reduce  
15 volatility. Market transparency and efficiency are  
16 therefore vital to ensuring that agricultural  
17 futures markets continue to serve these important  
18 roles.

19           In an effort to improve market  
20 transparency, the CFTC recently started publishing  
21 a revised Commitment of Traders Report. The  
22 Commitment of Traders Report is a weekly summary of  
23 trader positions, and each market is aggregated by  
24 trader type. We've recently disaggregated some of  
25 the trader types and expanded that market

1 transparency. The redivision of these new numbers  
2 goes a long way to better informing the public of  
3 the types of entities that are participating in the  
4 commodities markets and sort of the position  
5 leanings that they hold.

6           We're unique in that regard as a  
7 market regulator in publishing one of the most  
8 watched-upon reports that our agency puts out. Our  
9 chairman at CFTC, Gary Gensler, has also been  
10 leading efforts to regulate the over-the-counter  
11 derivatives marketplace. Much of the concerns that  
12 have been addressed today about transparency are  
13 concerns that he has addressed going forward.

14           We've suffered the worst financial  
15 crisis in the past 80 years as a nation, and our  
16 chairman has been on the forefront of seeing that  
17 effective reform of the over-the-counter  
18 marketplace occurs, and he believes that three  
19 areas need to be revised. First, we must  
20 explicitly regulate derivatives dealers. They  
21 should be required to have sufficient capital and  
22 to pose collateral on transactions to protect the  
23 public from bearing the costs if dealers fail.  
24 Dealers should be required to meet robust standards  
25 to protect market integrity and lower risk.

1                   Second, to promote public  
2   transparency, standard over-the-counter derivatives  
3   should be traded on exchanges or other trading  
4   platforms. The more transparent a marketplace, the  
5   more liquid it is, the more competitive it is, and  
6   lowers the cost for companies that use derivatives  
7   to hedge risk. Transparency brings better pricing  
8   and lowers for all parties the derivatives  
9   transaction costs.

10                  During the financial crisis, Wall  
11   Street and the federal government had no price  
12   reference for particular assets, assets that we all  
13   started to begin to call toxic. Financial reform  
14   will be incomplete if we do not achieve public  
15   market transparency.

16                  And third, to lower risk, further  
17   standard over-the-counter derivatives transactions  
18   should be brought to clearinghouses.  
19   Clearinghouses act as a middleman between two  
20   parties to a transaction, and they guarantee the  
21   obligations of both parties. Clearinghouses in the  
22   futures markets have been around since the 19th  
23   century and have functioned both in clear skies and  
24   during stormy times, through the Great Depression,  
25   through numerous bank failures, through two world



1 wars, and through the 2008 financial crisis to  
2 lower risk.

3 Another issue that is of great  
4 importance to the CFTC is the convergence of cash  
5 prices and futures prices. While this is not an  
6 issue in all markets, price convergence is crucial  
7 for those market participants who are using our  
8 nation's futures markets.

9 Last year the CFTC convened a  
10 convergence committee under the direction of  
11 Commissioner Michael Dunn, a resident of the great  
12 state of Iowa and the chairman of the agricultural  
13 advisory committee of the CFTC. The committee was  
14 originally tasked with assessing convergence issues  
15 in wheat markets. However, the CFTC is committed  
16 to working with members of industry as well as the  
17 futures exchanges to improve convergence wherever  
18 there are deficiencies.

19 As a final point, I'd like to  
20 emphasize the importance of your role in this room  
21 in creating transparent and efficient markets. If  
22 you see something that doesn't look right, we want  
23 you to bring it to our attention so that we can  
24 investigate. At the CFTC we have a hot line set up  
25 to handle calls from the public. We have a

1 dedicated e-mail account to receive referrals or  
2 concerns. I encourage all of you to use these  
3 resources if you feel that you have any information  
4 about futures concerns, concerns of rip-offs in the  
5 futures markets or in other markets.

6           There are two ways to reach us. One  
7 is to call us at a toll free number, 1-866-FON-CFTC  
8 phone being spelled F-O-N, which is also  
9 1-866-366-2382. Or you can e-mail information to  
10 us at enforcement@cftc.gov.

11           In closing, I'd like to thank the  
12 Department of Justice and USDA for the leadership  
13 in this conference. I'd like to thank you, Mark  
14 Tobey, for moderating this panel and for all your  
15 work on this conference and my staff who have  
16 helped me get up to speed on the issues of this  
17 conference, including Mark Higgins who's here  
18 today.

19           I continue to look forward to  
20 interacting with everybody in the audience and to  
21 hearing the remarks from my fellow colleagues.

22           MARK TOBEY: Thank you, Steve. Before  
23 we go on to John Ferrell, the unflappable John  
24 Ferrell who I've had the opportunity to work with a  
25 lot recently and will obviously work with a lot

1 more in the future, I think our FFA volunteers may  
2 have left the building, so if you do have questions  
3 and you want to hand them to that gentleman there,  
4 that is Sam Dinning who is the main sort of  
5 paralegal who helped plan this conference, so  
6 please pass your questions to Sam if you have  
7 questions for this panel.

8                   So let's move to John Ferrell. John  
9 Ferrell is the deputy under secretary for marketing  
10 and regulatory policy at USDA, and he oversees  
11 agencies responsible for ensuring animal and plant  
12 health, agricultural marketing, and competitive and  
13 fair trade practices.

14                  Prior to working at USDA, John served  
15 as the majority professional staff on the U.S.  
16 Senate Committee on agriculture nutrition  
17 enforcement. In this capacity he provided  
18 congressional oversight and implementation of the  
19 2002 farm bill and contributed to the development  
20 of the 2008 farm bill. John grew up on a hog,  
21 cattle, corn, and soybean farm in Iowa. John  
22 Ferrell.

23                  JOHN FERRELL: Thank you. And I just  
24 want to say that I am not an attorney. I'm kind of  
25 outnumbered up here. I've never been on Jeopardy

1     either.

2                   But I did grow up on a hog farm.  You  
3     know, I look across this room, and I recognize a  
4     lot of people.  I can almost, like, go around and  
5     name almost everyone here.  It's really great to be  
6     back home.

7                   A little bit about myself, I grew up  
8     during the farm crisis.  I remember what it was  
9     like to have 8 cent hogs, trying to make it through  
10    that, and I remember during that time our bank got  
11    overextended, and the FDIC came in and closed it  
12    down.  We had our assets all frozen.  Imagine  
13    trying to sell fat hogs during 100 degree  
14    temperatures and you can't sell your hogs.  That  
15    doesn't work out so hot.

16                  You know, during that time, you know,  
17    as in rural areas, they've got people who are  
18    moving out of the county.  Our school was forced to  
19    shut down because it got too small.  So when  
20    Secretary Vilsack today talked about that he was  
21    concerned about rural America, I share those  
22    concerns, and I hope that these workshops will help  
23    us create a good dialogue and have a good  
24    discussion of looking at, you know, what is working  
25    and what is not working.

1                   At USDA we are an every day and in  
2   every way department because we truly touch the  
3   lives of so many people across the country and  
4   overseas. We help farmers produce a sufficient  
5   nutritious food supply. We preserve the  
6   environment through conservation initiatives, and  
7   we make sure our meat and poultry and eggs are  
8   wholesome and fresh, and we help those who need  
9   food to get it.

10                  USDA also plays an important role  
11   ensuring that America's livestock and poultry  
12   markets are fair and aboveboard such as through the  
13   Packers and Stockyards Act. We also carry out  
14   other livestock and other price reporting to  
15   improve transparency such as through the Livestock  
16   Mandatory Reporting Act, and under the Perishable  
17   Agricultural Commodities Act, we prevent unfair and  
18   fraudulent practices in the marketing and selling  
19   of agricultural commodities.

20                  We also ensure producers that want to  
21   join together to improve their market opportunities  
22   are not discriminated against just because they  
23   belong to an association of producers such as  
24   through the Ag Fair Practices Act, and we also  
25   oversee the protections provided in the

1 Capper-Volstead Act.

2 Today I would like to focus my remarks  
3 on the Packers and Stockyards Act. Since this law  
4 was enacted in 1921 to protect producers from  
5 unfair and deceptive practices in the marketplace,  
6 GIPSA makes sure that packers and dealers have the  
7 financial protections in place to conduct business,  
8 assure producers are paid promptly, and stop  
9 practices that will harm producers.

10 Now, as you have heard today, there  
11 has been a fairly consistent consolidation in the  
12 livestock industry, and it continues to evolve.  
13 However, increased consolidation and vertical  
14 integration is not by themselves violations of the  
15 Packers and Stockyards Act, but what it does do is  
16 a consolidated market can increase potential for  
17 unfair practices. And such a market can influence  
18 the behavior of those that are dealing with  
19 producers.

20 Now, USDA can address unfair practices  
21 and other violations under the Packers and  
22 Stockyards Act in several ways. First, GIPSA can  
23 initiate a complaint or act on complaints from  
24 producers, Congress, or others. GIPSA has a 24/7  
25 toll-free hot line at 1-800-998-3447 for reporting

1 of complaints. And GIPSA will investigate all  
2 complaints received to see if there's sufficient  
3 evidence of a violation under the Packers and  
4 Stockyards Act.

5 Now, if a violation is determined,  
6 GIPSA may get the firm to admit their violation and  
7 pay a fine. If not, GIPSA turns the case over to  
8 USDA's office of general counsel who can then file  
9 administrative complaints. Ultimately USDA can  
10 force the firm to cease and desist their activity  
11 or pay for the civil or administrative penalties.  
12 Now, at any time USDA can also work in  
13 collaboration with the Department of Justice on  
14 these actions as well.

15 Now, the president's new budget for  
16 fiscal year 2011 makes an important investment for  
17 rural communities so that they're self-sustaining  
18 and can grow, and in particular the president has  
19 included additional funds for GIPSA to hire  
20 16 investigative staff which will allow GIPSA to  
21 conduct 500 more company audits. This increase  
22 builds on increases in 2009 and 2010 to strengthen  
23 compliance and enforcement activities. These funds  
24 will also help GIPSA better integrate legal  
25 capacity in their enforcement process which is long

1     overdue, has been called on by both USDA's  
2     inspector general and the government accountability  
3     office.

4                     Now, in our efforts to try to get more  
5     funds into our enforcement activities, with the  
6     Department of Justice now willing to provide us  
7     their attorneys, I now realize maybe I didn't have  
8     to work so hard to try to increase our budget. So  
9     we appreciate the help of DOJ.

10                    This funding increase also allowed  
11     GIPSA to streamline its enforcement tracking  
12     process by deploying an automated system that  
13     tracks investigation from initiation to final  
14     resolution which will allow the agency to more  
15     quickly monitor progress and more quickly move  
16     investigations to completion. All of these actions  
17     will result in increased GIPSA presence in the  
18     marketplace.

19                    If we do want to get serious about  
20     getting producers into livestock production, they  
21     need to know that the market that they're getting  
22     into is fair and aboveboard.

23                    We will also be undertaking new rule  
24     making to ensure fair market. In December GIPSA  
25     published a final rule on poultry contract fairness



1     that would prevent companies from arbitrarily  
2     terminating contracts without providing at least  
3     90 days' notice. The final rule also requires that  
4     a grower be presented a contract at the same time  
5     as the building specifications so that they can  
6     make some business decisions.

7                 For too long we have had complaints  
8     from producers where they were saying that they  
9     were being told or promised of a very long-term  
10    contract. They would go out to get financing.  
11    They would start the building of their facility and  
12    later find out when the contract would be  
13    presented, it would be in a form that was not very  
14    helpful to the producer. So we want to fix and  
15    level the playing field so that when the producer  
16    gets the contract, they also are seeing it at the  
17    same time as the building specifications so they're  
18    not left in a take-it-or-leave-it situation.

19                GIPSA is also developing a proposed  
20    rule to carry out the livestock title of the 2008  
21    farm bill. In general the farm bill required that  
22    USDA define undue preferences under the act and  
23    develop criteria it will consider in determining if  
24    additional capital investments required of a  
25    producer is a violation under the act. It also

1 requires that a reasonable period of time be  
2 allowed for producers to remedy a breach of  
3 contract.

4           Additionally, it requires that  
5 producers be provided a meaningful, fair  
6 arbitration process should that producer choose to  
7 use arbitration to settle their dispute.

8           Now, we encourage those that when this  
9 rule comes out that you all comment on it. As you  
10 know, the livestock industry is very complex. It's  
11 very dynamic. And this rule will need as much  
12 input as we can get from everyone in this room and  
13 across this country.

14           Lastly, I would just like to comment  
15 on the great relationship that USDA has got, has  
16 had with the Department of Justice in the last  
17 year. It has been -- you know, in my previous  
18 capacity on Capitol Hill, one of my biggest  
19 complaints was that I didn't feel that USDA and the  
20 Department of Justice did work together. In fact,  
21 I don't think they did. But I can say that today  
22 that has changed completely, and it's been very  
23 good to be able to have such a good working  
24 relationship.

25           So I will stop now. Thank you.

1                   MARK TOBEY: Thank you, John. Lastly  
2 but not least, we have Bill Stallings. William  
3 Stallings is the assistant chief of the  
4 transportation, energy, and agriculture section,  
5 TEA, of the U.S. Department of Justice antitrust  
6 division. TEA has responsibility within the  
7 Department of Justice for the enforcement of the  
8 antitrust laws and the promotion of competition for  
9 matters involving agricultural commodities such as  
10 livestock, grain, and seeds.

11                   Mr. Stallings is a graduate of the  
12 University of North Carolina School of Law, and  
13 I'll have to say he's been a very good support this  
14 year with the Tar Heels having a down year in  
15 basketball. And he joined the division in 1998 and  
16 became the assistant chief of TEA through that.  
17 Bill Stallings.

18                   WILLIAM STALLINGS: Thank you, Mark.  
19 I recognize I'm the last panelist after a very long  
20 day and that we want to get to the open mic  
21 portion, so I'm going to keep my comments very  
22 short, and I just wanted to cover a couple kind of  
23 quick almost process things but I think items which  
24 are very important, and that is, what exactly does  
25 the antitrust division do? And what are the types

1 of interests that -- and issues we examine?

2 We enforce the antitrust laws, and  
3 it's in our name. The antitrust laws, as most  
4 people here know, cover agreements in restricted  
5 trade, monopolization, and merger review. There's  
6 a lot of conduct which affects people that do not  
7 fall into any of those buckets, and it's one  
8 frustration I think people sometimes have in  
9 thinking that something is an antitrust action, and  
10 although we understand the problem, we understand  
11 the issue, it doesn't quite fall into an antitrust  
12 framework.

13 That's one reason we're having these  
14 workshops, is to work together with the other  
15 government agencies so that we can figure out and  
16 look at the conduct and talk to our other agencies  
17 and try to get some type of appropriate resolution.

18 But in just looking at the antitrust  
19 laws, something that Attorney General Bullock said,  
20 is -- I think I want to reframe my comments and tee  
21 off what he said. JBS did not simply have a change  
22 of heart. When we looked at that transaction, I  
23 spent, you know, a good year and a half of my life  
24 on it. It showed what the antitrust division can  
25 do, and it showed the steps we have to take to get

1 something done.

2 We're not a regulatory agency. We  
3 simply can't decide that an industry is too  
4 concentrated and say it needs to change. All we  
5 can do is go to court and ask a judge for relief.  
6 And as Attorney General Miller mentioned before,  
7 that is a -- that's a big restriction on what we  
8 can do, but it's a challenge to us, but it's a  
9 challenge that we undertake when the facts are  
10 right.

11 And the JBS case, which we can talk  
12 about the substance of a lot more in the Colorado  
13 workshop this fall, the issue is simply as outlined  
14 before. Two of the top four beef processors were  
15 seeking to merge. We looked at it. We had an  
16 incredibly intense factual review. Started off  
17 working very closely with our colleagues at USDA to  
18 get -- as soon as the deal was announced to get  
19 kind of an understanding of their view of the  
20 markets since obviously they live with them day in  
21 and day out.

22 We worked very closely with the state  
23 AGs. All of the states represented here were on a  
24 working group we had to investigate the case. The  
25 working group conducted numerous, numerous

1 interviews of market participants, and I personally  
2 know we've interviewed many people in this room in  
3 connection with that case. And all that was an  
4 effort for us to develop the facts that once we  
5 decided the facts justified a challenge to the  
6 case, we could present to the court.

7                   And we did that. We had to do it by  
8 legal time frames, a very quick time frame, and we  
9 challenged the case in federal district court in  
10 Chicago, and about four months into the litigation,  
11 the parties abandoned the deal.

12                   It was a very significant case for us,  
13 both in showing that we take agricultural issues  
14 very seriously, but I think it was also significant  
15 on a substantive level, and one of the critique  
16 that we've heard very frequently is that the  
17 antitrust division does not care about farmers,  
18 does not care about producers.

19                   If you look at that, the complaint we  
20 filed, it has -- one of the -- in describing the  
21 effects, it first looked at the effects the  
22 transaction would have on consumers. Obviously  
23 that's the bread and butter of what the antitrust  
24 division is all about, ensuring lower prices,  
25 ensuring innovation, ensuring that consumers get

1 the benefits of competition.

2 But if you look at the complaint,  
3 there is another section of it, and that section  
4 was about the harm that that transaction would  
5 cause to producers. And we outlined the harm as we  
6 saw it in regional geographic markets for the  
7 ranchers, and we challenged the case on that  
8 ground, and I think it should show convincingly to  
9 everyone in the audience that the antitrust  
10 division will take action to preserve competitive  
11 markets for producers.

12 I wanted to just kind of stress one  
13 more thing about that case and about our  
14 investigations in general is that we do need  
15 cooperation of people basically people in this room  
16 and others that when we conduct our investigations,  
17 we need to gather facts, and you know, obviously we  
18 want to hear general concerns about competition in  
19 the industry, but we also, though, want to hear  
20 specific facts that will help us to develop cases  
21 when we're doing our merger review and that, you  
22 know, if some deal gets announced down the road,  
23 don't be surprised if basically we cold-call you  
24 one day to say "We understand that you're in the  
25 industry." We are, as Attorney General Holder said

1     this morning in his President Eisenhower quote --  
2     you know, me and my colleagues, we are the ones  
3     with the pencils in Washington trying to figure  
4     out, you know, what's going on, and we do need your  
5     assistance to develop facts.

6                     At the end of the day when we look at  
7     the factual record, we might find that the merger  
8     is not anticompetitive, and we may close our  
9     transaction -- close our review of it. The merger  
10    may go forward, and there may be a sense of  
11    frustration, but we need to make a call on the  
12    merits. And when we do find facts that support a  
13    reason to challenge a merger, we will do so, and as  
14    Assistant Attorney General Varney said today, you  
15    know, we just two weeks ago sued to unwind a Dean  
16    Foods milk merger.

17                    So and I think -- I have to qualify  
18    this a little bit, but of the litigated challenges  
19    to mergers in the past few years, JBS and Dean  
20    Foods, both agricultural ones, both -- I think  
21    there was one other one that was litigated, but you  
22    can tell that the focus is on agriculture, and we  
23    are serious about that focus.

24                    There is a frustration on our end at  
25    times in that we do recognize we have to go to



1 court and that the burden of proof that we bear,  
2 it's a strenuous one. We have to convince the  
3 judge that a merger should be stopped. That  
4 sometimes frustrates us and our goal of basically  
5 advocating for a competitive market, so in addition  
6 to our enforcement activities, we do take very  
7 seriously our role as a government agency that can  
8 engage in competition advocacy.

9 I think as you can see from this  
10 workshop, we want to work with the other agencies,  
11 with the states to -- when we don't quite have  
12 enforcement actions that might address competitive  
13 issues, we can use a competition advocacy angle to  
14 try to make markets more effective.

15 MARK TOBEY: Thank you. It's been a  
16 long day, and we're going to have a little dialogue  
17 about a question. We want to get to the farmer  
18 testimony phase.

19 There were several good questions or  
20 comments that came forward. I want to get to two  
21 of them and then maybe just ask if any of the  
22 participants on the panel have any closing thoughts  
23 they want to give.

24 Steve, I'm afraid you drew one of  
25 these questions I want to ask you.

1                   STEPHEN OBIE: That's why we're here.

2                   MARK TOBEY: The question is what  
3 would it take to extend CFTC authority to cover  
4 cash daily trading at the Chicago Mercantile  
5 Exchange?

6                   STEPHEN OBIE: In some ways it would  
7 take an act of Congress to extend our authority in  
8 any area, but this is one of the areas where the  
9 division of enforcement is looking at in terms of  
10 cases. If you take a look at the TFA case that we  
11 brought a couple years ago, that involved in some  
12 respects not only milk futures but the cheese  
13 market, and our statute is fairly broad so that if  
14 there are cash market issues that affect the  
15 futures markets, we can be involved.

16                   And I can say that we have partnered  
17 in a number of cases with USDA and others. So if  
18 there's a specific allegation, I would definitely  
19 like to know about it so I can follow up on it.

20                   MARK TOBEY: Thank you. The other  
21 question, I'd like to handle myself. The question  
22 is, given the power that retailers like Walmart  
23 have in the food supply chain, will the Federal  
24 Trade Commission be involved in future hearings?

25                   And the answer to that is yes. The

1     hearing that -- the workshop that we're planning on  
2     December the 8th in Washington, D.C., we will ask  
3     the Federal Trade Commission, and I think they will  
4     be involved in that hearing, where we will talk  
5     about where the food dollar goes from the farm gate  
6     to the retail sale, and the FTC will be a part of  
7     that.

8                     So let me just then turn it back to  
9     the panel and say does anybody have any parting  
10    thoughts or comments? Steve.

11                    STEPHEN OBIE: Okay. So you know, I'm  
12    taking away three things from this workshop, and I  
13    really appreciate the dialogue that's occurred.  
14    One, to USDA and to the DOJ, the CFTC would like to  
15    participate in the task force. We've already  
16    detailed to the criminal division of DOJ a couple  
17    of CFTC attorneys. We certainly want to be a  
18    member of this task force with regard to the USDA.

19                    Second, clearly pricing issues are of  
20    great concern to everyone. Dominance and  
21    transparency are the issues, and I think in the  
22    following workshops that we have that that should  
23    be something that gets addressed.

24                    And then finally, continuing the  
25    dialogue with all aspects of not only the industry,

1 regulators, the state's attorneys general is very  
2 important as we go forward. And I appreciate the  
3 opportunity that I've had to get together here and  
4 to meet with so many people because that dialogue  
5 is very important.

6 MARK TOBEY: Thank you very much.  
7 Anybody else? All right. Let me just say we'll  
8 move to the farmer testimony immediately, I think,  
9 or as quickly as we can.

10 Just because we're enforcers, I want  
11 to say also that I know I'm willing, the Department  
12 of Justice is willing, and the U.S. Department of  
13 Agriculture is willing -- although we've been  
14 trying to develop a very public record here, we are  
15 willing to meet with people confidentially if that  
16 is something that you would require, and if you  
17 would like that kind of treatment, please give me a  
18 card, give me something, let me know, and we'll  
19 follow up with you. Thank you.

20 (Off-the-record discussion.)

21 PHIL WEISER: Okay. We are going to  
22 go into the final session. The previous session we  
23 had during lunchtime, we went ahead and went  
24 through one set of numbers. And we will give those  
25 numbers one more shot if any of you weren't here

1 but do want to speak, and then from there we'll  
2 give a new set of numbers, the idea being that we  
3 want to give all of you who sat through today's  
4 discussions and have reflections you want to share  
5 a chance to do so before we wind up.

6                   So let me read through the tickets we  
7 have of those who have already been picked, and  
8 then we can see if folks would like a chance to be  
9 heard. 479, 441, 388, 441, 411, 464, 392, 409,  
10 385, 424, 485, 462. I hear Bingo to the left over  
11 there. Just checking if you're listening. 533,  
12 434, 505, 499.

13                   All right. I see we have four people  
14 lined up. We will start with these four  
15 individuals, and then we'll do another round of  
16 some of the other tickets, see if we have other  
17 people. So two minutes, first speaker. If people  
18 could please be seated so our speakers have a  
19 chance to be heard. And please introduce yourself  
20 again.

21                   BILL BRIDGEFORD: My name is Bill  
22 Bridgeford.

23                   PHIL WEISER: A little louder, Bill.

24                   BILL BRIDGEFORD: My name is Bill  
25 Bridgeford, and I'm a farmer from Alabama. We grow

1     cotton, corn, soybeans, wheat, and canola. Each  
2     year when we decide what we're going to plant, the  
3     most -- the biggest decision we make is what  
4     variety and what seed we want to plant.

5                 We think we have plenty of choices,  
6     and we just choose the ones that we think will give  
7     us the best production and the best cost. And so  
8     that's my comment and I appreciate you very much.

9                 PHIL WEISER: And we appreciate you  
10    making the trip. Thank you very much, Bill.

11                MAURICE PARR: My name is Maurice  
12    Parr. I go by the name of Mo Parr. I was sued by  
13    Monsanto. I have been in business for 27 years.

14                After 13 years, Monsanto got a patent  
15    supposedly on their Roundup Ready soybean. At that  
16    time I put a disclaimer on the receipt that I gave  
17    farmers in which I said on that receipt "As of the  
18    date this ticket was printed, the U.S. Congress  
19    through the federal seed laws has expressly  
20    protected the right of farmers to save seed that  
21    they have produced to replant on ground they own,  
22    lease, or rent. Certain seed/chemical companies  
23    attempt to circumvent those rights by requiring  
24    farmers to sign agreements giving up those rights  
25    in order to purchase certain brands or types of

1 seeds. Custom Seed Cleaning," which is what I call  
2 my business -- "Custom Seed Cleaning is not a party  
3 to those agreements and will in no way hold itself  
4 responsible for enforcement or compliance of said  
5 agreements."

6 Monsanto sued me in federal court  
7 alleging that I encouraged, abetted, aided -- aided  
8 and abetted, encouraged, and enticed the farmer to  
9 break the patent law. I am guilty of giving the  
10 farmer a copy of the Supreme Court decision January  
11 the 18th of 1996 authored by Justice Antonin Scalia  
12 in which nine of the judges concurred -- eight of  
13 the judges concurred with his opinion that the  
14 farmer was allowed to save seed. They did not say  
15 that -- the justices did not say "except for  
16 genetically modified, except for Roundup Ready,  
17 except for anything."

18 As far as I'm concerned, the Supreme  
19 Court, the American people through the Congress in  
20 passing the law, and President Nixon in signing  
21 that law gave the -- protected the right of farmers  
22 to save their own seed.

23 Monsanto has essentially ruined my  
24 business. When the patent runs out in 2014, I'll  
25 be 80 years old. I probably will not be cleaning a

1 lot of seed after I'm 80 years old, but in the  
2 meantime, I've lost my business. I don't know that  
3 Henry David Thoreau was an attorney, but I kind of  
4 liked the attitude that he had in his book on civil  
5 disobedience in which he said that a person has the  
6 right and the moral obligation to disobey laws that  
7 are unjust.

8 I see this as an unjust law. I'm not  
9 certain that they have a right to patent on a  
10 living organism. Thank you.

11 PHIL WEISER: Thank you.

12 JOEL GREENO: I'm Joel Greeno, dairy  
13 farmer from Kendall, Wisconsin.

14 PHIL WEISER: Please speak up.

15 JOEL GREENO: Yeah. Yep. Is that  
16 better? Better? All right. I'm Joel Greeno,  
17 dairy farmer, Kendall, Wisconsin, national  
18 president of the American Raw Milk Producers  
19 Pricing Association, serve on the executive  
20 committee of the National Family Farm Coalition and  
21 founder of Scenic Central Milk Producers.

22 And I first want to thank the U.S.  
23 Justice and Agricultural Departments for hosting  
24 this historic series of workshops. I'm encouraged  
25 that the departments are taking a serious look at



1 the consequences of concentration on farmers like  
2 myself.

3                   However, with the magnitude of these  
4 problems, it is clear that we need an additional  
5 hearing focused on seeds with adequate time for  
6 farmers to speak.

7                   I'm here to be the voice of the  
8 voiceless, my parents whose farm was sold at  
9 sheriff's auction and on the courthouse steps, for  
10 the New York state dairy farmer who in mid-January  
11 went into his barn and shot 51 of his cows and then  
12 himself, and for my neighbor who was 62 years old,  
13 stopped at my farm last week and asked how he could  
14 get on food stamps. He and his sister were  
15 stripped of their family's dairy farm last year,  
16 owned since 1942, and he said the \$9,000 he was  
17 getting from Social Security didn't pay his bills.

18                   My life has value. My work has value.  
19 And the products I produce have value. And  
20 corporations like Monsanto and Kraft do not have  
21 the right to dictate the value of my work.

22                   Our nation's farmers' lives are right  
23 now in the hands of the Department of Justice and  
24 the USDA. You people have a choice to make.  
25 People first and corporations last. And the bottom

1 line of this is simple. Farmers must receive cost  
2 of production plus a reasonable profit from the  
3 marketplace, not from subsidies and other programs  
4 that fall horribly short and are ludicrously  
5 inadequate.

6                   GMO companies are taking control of  
7 the world seed supply aligning themselves to  
8 benefit financially from every seed sold in the  
9 world and the -- and also from the patenting of  
10 life. What better way to profit than own the  
11 source of all the food we eat?

12                   They have reduced my options for  
13 non-GMO seed. Many of my options left have no  
14 practical use on the dairy farm, and GMOs are of no  
15 value when fed to dairy cattle.

16                   GMOs have increased my costs to raise  
17 corn due to Monsanto's purchase of Holden Seed,  
18 taking control of much of corn's seed true base  
19 stock, nearly doubling the cost of my seed. All  
20 this at a time when milk prices are at their  
21 all-time worst. The last thing we need is  
22 increased costs with absolutely no benefit.

23                   I'm urging the Department of  
24 Agriculture to broaden the scope of their  
25 investigation and actions being considered to

1 include congressional and administrative actions  
2 such as removing utility patents on seed and seed  
3 genetics, transferring liability for economic  
4 damage resulting from protecting crop varieties to  
5 the patent holder, and reinvigorating public hope  
6 and broader development.

7                   Of course, it's clear we need to  
8 enforce antitrust law and break up monopolies.  
9 Farmers will not benefit from simple realignment of  
10 market shares held by three or four seed companies  
11 dominating the industry. These actions must be  
12 about restoring farmer choice and farmers' rights.

13                   It is important to note that people in  
14 my community, including farmers and small seed  
15 dealers, breeders, and companies are unwilling to  
16 come and testify in public due to fear and  
17 intimidation. The culture of fear that exists  
18 around patent seed technologies is real and  
19 serious. Thank you for the opportunity to provide  
20 these comments.

21                   PHIL WEISER: Thank you.

22                   KRISTINA HUBBARD: Hello. My name is  
23 Kristina Hubbard, and I'm the author of this report  
24 called "Out of Hand: Farmers Face the Consequences  
25 of a Consolidated Seed Industry." It was provided

1 to the docket for public comments. First of all,  
2 thank you for having this workshop. It's historic,  
3 and I appreciate the agencies coming together,  
4 bringing us together to talk about these problems.

5 I wanted to echo what the last  
6 gentleman said in that concentration of the seed  
7 industry was a pretty small part of today's  
8 discussion, and I do think it warrants its own  
9 hearing with an adequate amount of time for farmers  
10 to speak. That said, again, this workshop, again,  
11 thank you for hosting it.

12 We wrote this report, Out of Hand,  
13 because many farmers say that the prices they're  
14 paying are indeed out of hand for seed. We wrote  
15 it because farmers say that their choice, their  
16 seed options are dramatically reduced, especially  
17 in the way of conventional corn and soybean  
18 varieties. We're finding out of farmers' fear that  
19 the best in newest genetics will only be introduced  
20 with extensive patent and trait pending status, and  
21 this is a problem that needs to be part of this  
22 discussion.

23 I'm encouraged that the agencies are  
24 talking about examining the role patents play in  
25 facilitating concentration in the seed industry,

1 and I hope that the focus will not be only on  
2 competition within the trait industry but rather  
3 the concentration of ownership over plant genetic  
4 resources, over germplasm, the most fundamental  
5 piece of agriculture.

6 Congress long argued that utility  
7 patents should not be applied to seeds and seed  
8 genetics to sexually reproducing plants, which is  
9 corn and soybeans, and I hope that legislative  
10 actions and options are considered in this  
11 discussion as well. I think Congress should  
12 revisit the Plant Variety Protection Act and  
13 clarify that that should be the sole protection for  
14 plant developers producing these crops.

15 And just a reminder, a patent to  
16 remove a farmer's right to save seed or to  
17 facilitate a save seed is a form of competition.  
18 And then lastly on that point, patents are also  
19 locking up important genetic resources that public  
20 and private plant breeders alike often cannot  
21 access to further innovation.

22 Lastly, I wanted to speak to something  
23 that General Holder said this morning. He said --  
24 he was encouraging us to be frank about our  
25 perspectives. And unfortunately, there are many

1 people here today -- there are many people who  
2 aren't here today because they are unwilling to  
3 speak. They are afraid of repercussions from the  
4 dominant players.

5 My colleagues and I have spoken to at  
6 least a dozen seed companies, truly independent  
7 seed companies, who are worried about talking about  
8 the shortcomings of the seed industry. They're  
9 worried about simply sharing their story.

10 And so this culture of fear that the  
11 last gentleman mentioned is truly stifling voices  
12 of people who have important stories to share.  
13 These are public plant breeders. These are seed  
14 dealers, representatives of independent seed  
15 companies, and especially farmers.

16 So as people come up to this  
17 microphone, those who do have courage to share  
18 their perspective, please remember that their voice  
19 is a vote, and many of us are voting for a seed  
20 industry that meets the diverse needs of farmers  
21 and hopefully restores choice and rights back to  
22 our American farmers. So thank you.

23 MATTHEW DILLON: My name is Matthew  
24 Dillon. I'm with the Organic Seed Alliance, also a  
25 plaintiff in a lawsuit against the U.S. Department

1 of Agriculture, APHIS, for not following the  
2 National Environmental Protection Act in its  
3 deregulation of Roundup Ready attributes. I should  
4 say victor plaintiff in this case. We're in the  
5 remedy phase.

6 I do want to also thank you for these  
7 hearings. As other people have pointed out, seed  
8 in particular, I believe we need an additional  
9 hearing that's not just focusing on concentration  
10 but that spreads out to take on some of these other  
11 issues that are inhibiting farmers' freedom to  
12 operate, freedom to operate in their markets, and  
13 those issues do include issues of contamination in  
14 the marketplace and access to seed. I think it  
15 needs to expand out to include USDA, APHIS, the  
16 patent and trade office, the EPA, the congressional  
17 oversight for those committees.

18 My understanding of the purpose of  
19 having a competitive marketplace, the purpose and  
20 the goal, is not to line the pockets of  
21 shareholders and overpaid CEOs. The purpose of the  
22 competitive marketplace is to serve the needs of a  
23 diverse agricultural system.

24 Now, that's not happening, and that's  
25 quite clear, particularly in seeds. We once had a

1     diverse seed system that was served in a dual role  
2     by public and private plant breeders and seed  
3     systems. Public and private systems worked  
4     together in partnership and collaboration, but they  
5     also competed, public plant breeders in this public  
6     cult of ours that competed against the private  
7     industry and in particular served small and  
8     emerging markets in the public sector varieties.  
9     That hasn't happened.

10                 And there's two things that's both  
11     inhibiting the public and private sector from being  
12     diverse. In the private sector, as many people  
13     have pointed out, and I won't belabor the point,  
14     the utility patent is the strongest tool that's  
15     creating monopolies and inhibiting the development  
16     of regional diverse seed companies that can be  
17     competitive.

18                 In the public sector the Buyh-Dole Act  
19     needs to be examined. The Buyh-Dole Act changed  
20     funding for our federal -- our public land grant  
21     institutions so that they are beholden to private  
22     companies for their plant breeding dollars, their  
23     research dollars, and we need to have an audit of  
24     the Buyh-Dole Act to examine whether or not it is  
25     actually doing its job or it's inhibiting



1 innovation and research. That needs to be done.

2 It needs to be done soon.

3           We need an industry that's really  
4 going to be responsive to minor emerging markets,  
5 and you guys mentioned niche markets and organic  
6 and little markets as niche. Well, organic is not  
7 a niche market. It's the fastest growing market in  
8 the United States. We're not hiding in the corner.  
9 We're out in front, and we're innovative and  
10 leading the charge.

11           American markets are supposed to be  
12 about innovation. Organic has innovated. They've  
13 taken risk. They've made investments. They've  
14 been successful. But we need the protection and  
15 the freedom to operate. We don't have access to  
16 seed. The majority of organic farmers plant  
17 conventional seed, are reliant on biotech companies  
18 to lease our inbred lines for organic corn  
19 production, and yet we can't even test these inbred  
20 lines because of intellectual property rules to  
21 determine if these inbred lines are contaminated.

22           So organic seed companies are planting  
23 inbred lines that we know are contaminated with  
24 biotech traits and further contaminated on  
25 marketplace and hurting our customer base and our

1     credibility. So this has to be a bigger issue.

2                     I applaud you for what you've done,  
3     but we need to go a step forward and expand this  
4     dialogue out. Thank you very much.

5                     PHIL WEISER: Thank you.

6                     SCOTT REMINGTON: I'm Scott Remington  
7     from Winterset, Iowa. I've been a cattle producer.  
8     Since I was 12 years old, I've owned a cow, before  
9     I even bought a car.

10                    The issues I see here today, we've  
11     talked a lot about life. The ownership of life is  
12     really essentially in conflict here, and where I  
13     came from in my experience, I've also worked with a  
14     consultant for natural fertilizers and working with  
15     the natural biological way. And I do know about  
16     life.

17                    And today I thank you for being here  
18     because this is encouragement that we are actually  
19     having dialogue, and we have a lot of points of  
20     opinion here. But you know, on the simplistic  
21     side, I won't repeat what other people have said  
22     more eloquently than I could. We have a broken  
23     system. There's no question in my mind. And if we  
24     looked at the history, history repeats itself. We  
25     had to crush the corporations in the late 1800s.

1 It came back around.

2 But today it's at the most critical  
3 time because now what we're doing in my expertise  
4 with the soil is that we aren't even regarding the  
5 life in the soil. We have had no talks about  
6 biological system that made Iowa soil as deep as it  
7 was. It wasn't corn, beans, corn, beans, corn and  
8 beans. It was the tall grass prairie. And that's  
9 not being just tree hugging and stuff. That is a  
10 biological fact.

11 We've gotten away from the system of  
12 agriculture, of sustainability so far, and as a  
13 consultant and doing soil tests and working with a  
14 lot of different clients over the years, one of the  
15 greatest losses we're having is our top soil.

16 We cannot change -- we're a dog  
17 chasing its tail with relying on biotech, and I'm  
18 not against that. But my golly, you have to really  
19 be careful. And my testimony today is that we  
20 can't even drink out of the wells safely in the  
21 state of Iowa. We had to get rural water because  
22 the nitrates and the pesticides and everything.  
23 That's a fact.

24 And when we talk to people on the  
25 coasts that don't know it and if we tell them that

1 we can't -- the majority of our wells in this state  
2 aren't safe to drink, well, what kind of food are  
3 we sending them?

4                   So there's a little bit of twist, but  
5 you know, I thank you for being here. But this is  
6 life. This is all of us. Urban, rural, wherever  
7 we are, and we're supposed to be a leader in the  
8 agriculture in the world? We're actually failing  
9 very miserably. But, you know, everyone that came  
10 here, I thank you very much, and thank you for  
11 letting me speak.

12                   PHIL WEISER: Thank you.

13                   HARVEY HOWINGTON: My name is Harvey  
14 Howington, and I own and manage a rice and soybean  
15 farm in Poinsett County, Arkansas. The time to  
16 talk is short, so I'll get right to the point.

17                   Utility patents are a failed  
18 experiment. The seed companies told us they needed  
19 patents to justify spending the research money  
20 needed to advance this cutting edge technology.  
21 They will tell us we need GMOs to feed a growing  
22 world. I agree we need GMO technology, but the  
23 products the companies are bringing to the  
24 marketplace are not the products needed to feed the  
25 world. They are all about company profits.

1                   The companies will say average yields  
2   go up every year. That is because farmers who  
3   can't get the maximum yield out of the varieties  
4   are not around next year. Hundreds of farmers go  
5   broke every year, and rural America is drying up.

6                   As for that promised research money, I  
7   strongly suspect the companies are spending far  
8   more on enforcing those patents than they do  
9   developing varieties. But lawyers get most of the  
10   money.

11                  Seed costs have skyrocketed. We lost  
12   the thing farmers and inhabitants of this planet  
13   that is most precious to us, and that is the  
14   intellectual property rights to our food.

15                  As a Southern rice farmer, I would  
16   like to comment about a practice that negatively  
17   affects the price farmers get for their crop.  
18   Large farmer cooperatives will swap rice with each  
19   other and other large rice farms to avoid going to  
20   the marketplace to buy rice. They will in the  
21   future pay them back in kind but for a reduced  
22   price after the market has dropped.

23                  This predatory market practice masks  
24   demands for rice. It allows the companies to pay  
25   less than market price for rice. We think it could

1     also be a violation of the Capper-Volstead Act for  
2     the cooperatives to do this. I really appreciate  
3     the opportunity to speak today.

4                     PHIL WEISER: Thank you.

5                     SAM CARNEY: My name is Sam Carney.  
6     I'm a farmer from Adair, Iowa, fourth generation.

7                     PHIL WEISER: Try again.

8                     SAM CARNEY: There we go. Fourth  
9     generation farmer. In 1998 and '99 I brought my  
10    son into the operation. As you know what happened  
11    to pig prices. My banker called me in. He says  
12    "You have to quit this bleeding bread." He says  
13    "We need to do some risk management with you."

14                    So we've done risk management for the  
15    past 10, 11 years, and it's worked very well for  
16    us. It's made us a very successful business. I  
17    don't want to lose those options. I don't want  
18    those taken away.

19                    I can take my pigs, I can contract  
20    with a packer, and I get along very well, and I  
21    don't necessarily use the same packer time after  
22    time. I use variation of different packers. I  
23    need those options. I have to provide my banker  
24    with cash flows and make sure I have a risk  
25    management tool.

1                   In today's volatile market and as  
2     we've seen last year when H1N1 hit, and nobody was  
3     going to predict that, we seen what the markets  
4     did. We've got to have a risk management tool, so  
5     please, I ask you don't take that away so my son  
6     and I can keep operating. Thank you very much.

7                   JOHN WEBER: John Weber, pork producer  
8     from Dysart, Iowa. Just want to make a couple of  
9     comments on what I've heard today. I've jotted  
10    down a few notes.

11                  While significant consolidation has  
12    occurred, especially in the pork industry, I think  
13    it's fully -- it's fully important to understand  
14    the forces that brought this consolidation about.  
15    I often think about this. There's a multitude of  
16    forces that brought consolidation about. It wasn't  
17    just the bottom line and the people doing it.

18                  I think we can be very proud in this  
19    country at the products that we're producing, the  
20    food and the quality of the food we're producing  
21    all the way through, and part of it is due to some  
22    of the efficiencies that we have gained through  
23    this consolidation process, so I don't want to  
24    jeopardize our food production system not only for  
25    us here in this country but for those abroad.

1                   The other thing is that in my area and  
2   throughout the Midwest, there are thousands of  
3   producers that depend on these types of systems or  
4   contractual arrangements. We happen to own the  
5   pigs that we feed in our operation, but we are  
6   definitely part of a production contract system,  
7   and I've been in that system for 16 years, and it's  
8   been very successful for me, and I know quite a few  
9   other producers in our area, and I really from a  
10   producer don't want to lose that ability. I know  
11   several producers that would not be in business if  
12   they hadn't had the ability to do that.

13                  Our industry needs choices of market  
14   systems because there are a wide variety of  
15   independent producers as well as those  
16   consolidated, and transparency is important to us.

17                  I think we have to be very careful of  
18   how we develop new programs or new regulations that  
19   affect these systems because they will not only  
20   affect producers, but they also affect consumers in  
21   the price of food that they're going to pay.

22                  One last comment I jotted down here at  
23   the end, we talked a lot today about the age of the  
24   agricultural producer and bringing youth into  
25   agriculture. Just a comment I would like to make



1 on that. I think there's avenues that our  
2 government could incentivize youth in agriculture.  
3 I think it would be wise to help the 65 and older  
4 group, whether it's through taxation or what it  
5 might be, but to give them an incentive to bring  
6 new producers into their operation rather than just  
7 stepping out, and I think it could be done through  
8 a tax structure very easily. So those are the  
9 comments I'd make. Thank you.

10 PHIL WEISER: Thank you.

11 NICKI DALLMAN: Hello. My name is  
12 Nicki Dallman, and I'm a certification specialist  
13 and inspector for MOSA, Midwestern Organic Services  
14 Association. We're located -- we're an organic  
15 certification agency located in Viroqua, Wisconsin.  
16 We certify 1,400 organic farmers and producers in  
17 11 states. And we also certify more organic dairy  
18 farmers than any other NLP accredited agency.

19 I would like to express concern for  
20 the potential release of GMO alfalfa and the threat  
21 it poses to our organic farmers. The concerns  
22 surrounding the release of GMO alfalfa are  
23 different from those existing in GMO corn because  
24 of the way in which alfalfa is pollinated.

25 As certifiers of organic products, we

1 help to ensure the organic integrity of corn crops  
2 by determining the distance of the farmer's organic  
3 crop from a neighbor's conventional crop, which  
4 direction the wind blows, what barriers lay between  
5 the two fields, and what time of year their crop  
6 pollinates versus their neighbor's crop.

7               Likewise, our organic corn breeders  
8 are able to maintain the genetic integrity of their  
9 seeds by making sure those same barriers are in  
10 place. Alfalfa, however, is open pollinated or  
11 cross-pollinated as opposed to corn which is a  
12 self-pollinator, and alfalfa relies mainly on bees  
13 to distribute the pollen. Alfalfa is also a  
14 perennial versus an annual crop such as corn,  
15 allowing the genetic makeup of a different field to  
16 change from year to year.

17               The National Organic Standards Board  
18 apiculture task force devised a report in 2001 for  
19 farmers in which to certify organic honey. The  
20 reports sought to define new borders of honeybees  
21 which is established at a 1.8 mile radius from the  
22 bee yard with an additional surveillance of up to  
23 2.2 miles. This means that there are to be no  
24 genetically modified crops within a 2.2 mile radius  
25 of the farm as it is believed that anything short

1 of that topography or terrain poses a threat to  
2 that organic integrity of the honey.

3               There is no way a certification agency  
4 could possibly enforce or monitor these guidelines,  
5 nor do we believe we should have to.

6 Alternatively, this means that the organic  
7 integrity of alfalfa crops will be jeopardized by  
8 genetic contamination with the degree and  
9 implications of the contamination unknown.

10              When a consumer purchases a product  
11 with the USDA organic seal on it, they believe they  
12 are getting a product that contains little to no  
13 GMOs and was raised without any genetically  
14 modified inputs, and they're willing to pay a  
15 premium for that product.

16              This premium is what helps keep our  
17 500 family-run organic dairy farms in business as  
18 well as other farmers who sell organic feed and in  
19 our seed companies who breed organic seed. It's  
20 our job as a certification agency to ensure the  
21 organic integrity of their crops and their market,  
22 and we feel that we are able to do that and to  
23 stand behind the organic seal placed on these  
24 products.

25              However, we cannot say that this will

1 be the case if GMO alfalfa is introduced with  
2 nonregulated status, and that is why I'm here today  
3 to express my concerns. Thank you very much.

4 PHIL WEISER: Thank you.

5 BRAD WILSON: Brad Wilson, Iowa family  
6 farmer. You know, I feel like I've heard quite a  
7 few political speeches here on the panels, and one  
8 of the things they were saying is about how much  
9 they want to hear me. And I listened to that all  
10 day long. I don't necessarily see them here now.

11 You know, I'm out here in this line,  
12 and I'm in competition to speak. We have a  
13 competitive market out here but little fringe.  
14 That's a little bit that's left, a little bit of  
15 time left. But up here we have a protected market  
16 where they got to speak and just reminds me that  
17 you're treating us, you at DOJ, USDA, are treating  
18 us the same way Monsanto treats us. And so I think  
19 we need to change the process.

20 You can have debates where you put us  
21 up against your people. I think we can beat your  
22 people and have a series of debates if you get --  
23 if you have high status, you don't get to move on  
24 just because you have high status. If you get beat  
25 because you don't have the competence, then we get

1 to move up, and we'll be the ones that end up in  
2 Washington. If you have that debate, we'll win  
3 that debate, and you should be giving a chance for  
4 that truth to come out.

5 Now, you know, we kind of had a  
6 heads-up on some of this here. When Vilsack was in  
7 Iowa, he wrote the nuisance lawsuit protection  
8 provision for House Bill 519, the hog factory bill,  
9 and so that got a lot of things going here, getting  
10 legal protection for that kind of change.

11 We have also as governor -- that was  
12 as a legislator. As governor, he pushed the Iowa  
13 2010 Report. Well, 2010 is here. The 2010 Report  
14 in Iowa said we want Iowa to be the life sciences  
15 capital of the world by 2010. Now, they probably  
16 have copycat reports over in Missouri and Minnesota  
17 and all these places. They're saying they want to  
18 be the tough -- well, interpret it but the biggest  
19 ag complex in the world, so it's a concentration  
20 effort that came from that.

21 Now, you go to the Iowa 2010 Report,  
22 Volume 2, they have from the hearings all of the  
23 people from this kind of a line here, and those  
24 people said we don't want that concentrated system,  
25 but they weren't heard and didn't get in the final

1 report, and that's what I'm kind of hearing here.

2 Now, you know, Lewis Mumford, he's the  
3 great writer about technology and mega-techniques,  
4 and he taught us that mega-techniques is an  
5 authoritarian technique, and as you hear the things  
6 said out here, it's very clear that we're already  
7 in the effects of these authoritarian measures that  
8 are coming down at us, and if you don't understand  
9 from Iowa State University, other land grant  
10 people, the economists, if they don't understand  
11 that the technology that we're talking about here  
12 because mega-techniques -- and if you don't know  
13 how that technique works, that it is authoritarian,  
14 then you don't understand technology in agriculture  
15 today and in the other sectors of the economy, and  
16 I didn't hear anybody up here that understood that.

17 Now, you know, we got -- maybe we got  
18 some congressional people left. I don't know. But  
19 I'm used to speaking when everybody has gone home,  
20 including the press.

21 UNIDENTIFIED MALE: We're still here.

22 BRAD WILSON: In Congress, we have had  
23 a farm bill where they on purpose have lowered the  
24 price floor down, down, down, starting in the '50s  
25 to today. And then it lowers it to zero. Now,

1     what that did was that made cheaper and cheaper and  
2     cheaper grain to the big corporations. They talk  
3     about farm subsidies because you're losing so much  
4     money every year that you get a subsidy, but these  
5     corporations didn't lose any money to get their  
6     bigger benefits. And so here we have that, and  
7     that fuels this concentration. That's all a part  
8     of the fueling this concentration. That's not the  
9     type of reasons that were given on the panel today.  
10    That's a political reason where they chose that.

11                 You know, you go back to the CED  
12    report of 1962 where they said "We want to get rid  
13    of one-third of the farmers in five years." And so  
14    that's an authoritarian statement. And they  
15    said -- I heard all this, you know, talk from your  
16    panels about youth. We want our farm youth. The  
17    CED report said "We want programs to get rural  
18    youth to move away," and we've been dealing with  
19    that, with the NFO and all these groups, for  
20    decades.

21                 Okay. I'll wind this up right now.  
22    Right here. Yeah. The ERS data shows that we lost  
23    money. I've summed up the five big crops in the  
24    farm program and then barley, oats, and grain  
25    sorghum. From 1981 to 2006, you put in the acres

1 with the net per acre, actually, and you sum those  
2 up, and we lost money every single year except  
3 1996.

4 So the policy of the United States was  
5 that we will export our grain for 25 years and  
6 lower our costs, that the United States will lose  
7 money. Same thing. You know, we've got 40 percent  
8 of the market. We'll raise our price. Now, that's  
9 an authoritarian system. The United States will  
10 lose money so that these big corporations can  
11 benefit all around the way.

12 You know, I really can't thank you for  
13 this process.

14 PHIL WEISER: Thank you.

15 GEORGE NAYLOR: Hi. My name is George  
16 Naylor. I'm a farmer from Churdan, Iowa, past  
17 president of the National Family Farm Coalition.

18 I think if I'd have been to this  
19 meeting 20 or 30 years ago, I'd start out by saying  
20 the same thing. Basically you're closing the door  
21 after the horse is out of the barn. And actually,  
22 you're closing the door after the horse thieves  
23 have stole the horse.

24 These horse thieves have stolen our  
25 family farm system. They've stolen the



1 biodiversity of Iowa. Now they're stealing a  
2 decent health care for all of us. They're stealing  
3 our -- the future of our democracy and the future  
4 of our children.

5                   There's grave consequences for what  
6 these three corporations do with their economic and  
7 technological power. Monsanto -- and this is  
8 really the technology we're talking about here,  
9 genetic engineering. Okay. Roundup Ready  
10 technology is being used to destroy biodiversity in  
11 Brazil and all around the world, and now Monsanto  
12 is promising to create corn as resistant to drought  
13 and resistant to salty soil so as to feed poor  
14 people around the world.

15                   Well, the truth of the matter is that  
16 technology will be used to plant vast areas of corn  
17 from horizon to horizon, destroying biodiversity on  
18 arid land that never was used to produce crops  
19 before.

20                   And so the United States is giving  
21 Monsanto the right to put this technology out  
22 there, to let their genes go all around the world,  
23 and to somehow certify that it's okay for the  
24 environment when we know that there can be no such  
25 guarantee. We can't guarantee that it's okay for

1 the environment here in Iowa, let alone in Mexico  
2 and South America and Africa and whatever. So the  
3 power that you, that we, give to Monsanto to do  
4 what they do, like I said, has grave consequences.

5 Now, personally I was in a lawsuit. I  
6 was a plaintiff in a lawsuit with the president of  
7 the Iowa Farmers Union, Chris Peterson, 11 years  
8 ago where we brought a suit against Monsanto.  
9 Chris's part of the lawsuit was explicitly an  
10 antitrust lawsuit. We said that they had bought up  
11 many of their competitors with the intention of  
12 monopolizing the industry. And let's see. Well,  
13 anyway, it was an antitrust lawsuit. I'm sorry. I  
14 forget the other part of it.

15 But the funny thing is that after the  
16 judge had dismissed our antitrust lawsuit, it came  
17 out in the New York Times that this judge had been  
18 a lawyer for Monsanto, and he should have recused  
19 himself, but he didn't.

20 Okay. This was in an article by David  
21 Barboza in January 6 and 9 of 2004. David Barboza  
22 also presented plenty of evidence in his articles  
23 that the CEOs of these major corporations, Pioneer,  
24 Syngenta, Monsanto, got together and agreed to  
25 charge a uniform price, a price higher than any of

1     them had to charge. Okay? Which was against the  
2     Sherman Antitrust Act. Okay.

3                     But since the judge said that we  
4     couldn't have a class-action lawsuit and we could  
5     proceed for just one farmer, we couldn't afford to  
6     go ahead with the lawsuit.

7                     Now, I'm asking you, where was the  
8     federal government in trying to enforce the Sherman  
9     Antitrust Act, and is there any chance that you in  
10    your positions, this administration, can try to  
11    enforce the Sherman Antitrust Act based on their  
12    activity to monopolize the market back then?

13                    PHIL WEISER: I would just reiterate  
14    what Bill Stallings said, and Bill, Mark Tobey, and  
15    I are here if folks want to talk afterwards. If  
16    you have allegations or information, we want to  
17    hear it.

18                    GEORGE NAYLOR: Okay. Well, yeah.  
19    You look up the article by David Barboza in the New  
20    York Times on January 6 and 9, and you can read  
21    about it.

22                    PHIL WEISER: Thank you very much.

23                    MARCIA ISHII-EITEMAN: Good afternoon.  
24    I am Marcia Ishii-Eiteman. I'm the senior  
25    scientist for the Pesticide Action Network, and I

1 would principally like to share with you the  
2 results of a landmark International Assessment of  
3 Agriculture that came out last year.

4           This is the International Assessment  
5 of Agricultural Knowledge, Science, and Technology  
6 for Development for the IAASTD report, was authored  
7 by over 400 scientists and development experts from  
8 over 80 countries, two public and transparent  
9 peer-reviewed processes, and has been fully  
10 approved after an intergovernmental review by  
11 58 governments. This was just published last year.

12           I'll give you a bit of information  
13 about this afterwards, but this landmark report  
14 already examined in detail the successes and  
15 shortcomings of our food and agricultural system in  
16 the U.S., in North America, and around the world.  
17 And it also looked explicitly into the kind of  
18 issues we've been talking about today around  
19 competition, the effects of corporate consolidation  
20 on our food and agricultural systems, and the  
21 impacts of that on farmers, farm workers,  
22 consumers, the environment, and so on.

23           So I would just like to draw out a  
24 couple -- very few of the key findings. One we've  
25 heard a lot about today about the contribution of

1 biotechnologies to, quote, feeding the world. And  
2 actually, this report examined biotechnologies and  
3 a full range of agricultural technologies in great  
4 detail, and one of the key findings is that, in  
5 fact, the food prices and the hunger and  
6 nonnutrition you're seeing in the world today,  
7 which is enormous, is not due to a lack of access  
8 to the GMOs and the biotechnology that Monsanto is  
9 bringing to us and other corporations are bringing  
10 to us but rather to poverty and lack of access to  
11 healthy and affordable food.

12               So there are money countries,  
13 including our own, that are producing massive  
14 amounts of food. The issue is not a need to  
15 increase production but to see that distribution is  
16 far more equitable.

17               The other thing that the report found  
18 was that widespread adoption of and, in fact,  
19 particularly patenting and corporate control over  
20 the more modern and recent technologies has very  
21 directly benefited transnational corporations and  
22 the wealthier groups, not so much the small scale  
23 farmers and family farmers.

24               Also, some of these technologies have  
25 yielded some significant short-term benefits, but

1 they have had significant and growing costs on the  
2 environment and our ability as a community and  
3 society to maintain clean soils, clean water,  
4 functioning local -- vibrant local economies and  
5 the health of our families and of future  
6 generations.

7                   And so the question is not so much,  
8 you know, can, quote, unquote, sustainable organic  
9 or less heavily based on inputs, can that kind of  
10 agriculture feed the world, but can the kind of  
11 agriculture that we're seeing based on these  
12 corporate control technologies feed the world? And  
13 the answer to that last question is no. The  
14 direction we are going in is not sustainable  
15 business as usual. It's not an option.

16                   And finally, just to say the report  
17 also noted that in North America in particular,  
18 growing market concentration in multiple  
19 agricultural sectors has now paved the way for near  
20 total control of our region's food and agricultural  
21 systems by the transnational corporations, and that  
22 had resulted in a dramatic reduction in fairness  
23 and competition, the things that many of the  
24 farmers today are talking about.

25                   So the ways forward, the report really

1 points towards enforcement, establishment of much  
2 stronger antitrust mechanisms and rules, things  
3 that you are investigating, stronger competition  
4 policies including regulations that look at global  
5 and international competition, and I would  
6 encourage you to go from one of the suggestions in  
7 the report about cooperating with other governments  
8 to establish an international review mechanism that  
9 would look at the transnational effects of  
10 corporate control over inputs and over the food  
11 system.

12                   So far just to say that, you know, I  
13 know some of these things may seem like out of the  
14 purview of the antitrust division or out of this  
15 particular investigation, but that is why we and  
16 all of our members would like to call on the  
17 Department of Justice and the Department of  
18 Agriculture to broaden the scope of this  
19 investigation.

20                   This is an important beginning, but  
21 really, in order to establish the vibrant local  
22 food systems that are what will save family farmers  
23 and will bring this country back on its feet is  
24 going to require a much deeper investigation. Our  
25 agricultural sciences is on the line. Good

1 governance is at stake, and human health is on the  
2 line as well, and so we put forward this request  
3 that you work together and bring in Congress as  
4 well to really broaden the investigation in a  
5 thorough and --

6 PHIL WEISER: You'll be submitting  
7 your report to our website also?

8 MARCIA ISHII-EIDEMAN: Yes.

9 PHIL WEISER: That would be great.  
10 Thank you very much.

11 UNIDENTIFIED MALE: Are you still  
12 using the number system?

13 UNIDENTIFIED MALE: People stand up --

14 UNIDENTIFIED MALE: Because in the  
15 interest of fairness --

16 PHIL WEISER: I had assumed the people  
17 that had come up had been called, but I take it  
18 people now are not the numbers we've called? Is  
19 that the observation? So why don't we go -- we'll  
20 let you speak, and why don't we go for the last  
21 numbers. Pick up five more numbers. I assume  
22 everyone took a number, so read the numbers here.

23 518, 484, 502, 480, 520. Those people  
24 could line up if they're here. In the meantime,  
25 we'll let you go ahead.



1                   SANDRA CHRISMAN: Thanks. My name is  
2 Sandra Chrisman. I'm here from Live We're There,  
3 formerly World Hunger Year in New York City. I'm  
4 also a legal aid U.S. worker in farm food crisis.

5                   I work with, among other people, many  
6 low-income communities in New York and around the  
7 country and around the world, and I'd really like  
8 to make a point on -- a couple of points on cheap  
9 food.

10                  We've heard a lot about that we need a  
11 lot of these technologies, and we need this current  
12 system of agriculture that we have now to be able  
13 to produce the volume that we need to feed a hungry  
14 world.

15                  My first point is that in the food  
16 crisis a year and a half ago, when prices for food  
17 were spiking and there were riots around the world  
18 and farmers were having really a tough time with  
19 inputs, the top three grain producers had price --  
20 showed price increases at that point in that period  
21 of 67 to 89 percent. So they were making money at  
22 the same time that both farmers and the consumers  
23 were really hurting.

24                  My second point is that yes, there is  
25 cheap food that's available around the country and

1 in low-income areas, both urban and rural, but the  
2 food that's available, I don't know if you've been  
3 to a lot of low-income areas around the country,  
4 rural and urban. A lot of it can barely be called  
5 food. It's calories, but that's not providing  
6 health to anyone.

7                   And that brings me to my third point  
8 that cheap food is not really cheap. The  
9 externalities that come with our cheap food are  
10 very real, and we're going to have to pay them at  
11 some point sooner or later, whether that's in our  
12 soil quality, on which all of our food is growing,  
13 in our rural economies, and in our health.

14                   One in three kids, I'm sure you know,  
15 born after 2000, it's predicted to develop  
16 diabetes. It's unbelievable to me that we're able  
17 to talk about health care and not be talking about  
18 the kind of food that we have available in our  
19 communities.

20                   Many consumers are losing out in this  
21 system just as much as farmers are. And as Marcia  
22 said, as other people have said, there really are  
23 other ways to explore to feed the world. Small to  
24 mid-scale locally based, regionally based  
25 agriculture is not just a niche thing. It gives

1 the opportunity to compete. It gives the  
2 opportunity to scale up, to have processing  
3 infrastructure, as we have heard about. It really  
4 needs the ability to have a level playing field and  
5 be able to be another real option.

6 And finally, I'd just like to say I  
7 really appreciate that in December we'll be having  
8 a panel looking at and hearing from consumers, and  
9 I'd like to recommend that we have another panel at  
10 some point during the year to also hear from more  
11 voices of consumers because this is about our food  
12 system and who controls our food system, and we all  
13 eat, and we all really need to be able to have the  
14 opportunity to speak out on this just as much as  
15 the producers have. Thank you.

16 PHIL WEISER: Thank you.

17 LARRY SCHRODER: I thank you for  
18 having this today. I'm Larry Schroder,  
19 diversified -- we have a diversified farm in  
20 northeast Iowa, crops, dairy, hogs, and beef.

21 I would like to address -- reinforce  
22 several great points I think we've heard today.  
23 We've heard a number of great ideas. I'd like to  
24 disagree a little bit with what was said before. I  
25 know the horses may be out of the barn, but we can

1 get them back in again. We can't get in front of  
2 the train, get run over, but maybe we can turn it a  
3 little bit.

4               We are a resilient people, a resilient  
5 economy, and I think if we make the system halfway  
6 fair and level playing field, as Secretary Vilsack  
7 has said, we can change this. I think most  
8 important point we've heard today is about the  
9 retail margins. I believe the retailers have too  
10 much power. We can all be concerned about the  
11 processors, and I am, but the retailers have taken  
12 an ever greater share of the retail dollar, and  
13 that has hampered our processing and especially our  
14 production sectors.

15              By taking those extra margins, they've  
16 taken away money for innovations and strength in  
17 our sectors. By expanding their margins in time of  
18 up markets, and by lagging down markets, they do  
19 two things. They keep their profits for a longer  
20 time, and we all know that consumers have a demand  
21 that's influenced somewhat by the prices, and so as  
22 they keep those prices higher than they should be,  
23 they tend to stifle demand, shorten the up cycles,  
24 and lengthen the down cycles by increasing  
25 inventories and keeping those inventories longer

1     than they should have been.

2                     Second, we do have too much  
3     consolidation of the packing industry. We're  
4     greatly affected by that in our pork sector. We  
5     are still part of the open market. We are an  
6     independent farrow-to-finish operation, so we are  
7     rare indeed.

8                     I know there are reasons for  
9     contracting and so forth, but I agree with Chuck  
10    Wirtz that we need to make an effort to increase  
11    that. Livestock ownership of packers should be  
12    limited to 10 to 14 days prior to slaughter. The  
13    supply contracts -- and I agree with what was said  
14    several times. When they have 90 to 95 percent of  
15    their supply lined up, why would they ever bid hard  
16    for that last 5 percent? They would rather let  
17    those slots stay empty rather than increase the  
18    price on the rest of the 95.

19                    Sustainability. We've all heard that  
20    term of art, and I think one point that's been  
21    overlooked is that sustainability needs margins in  
22    an industry, enough profits from within to renew  
23    itself for facilities, systems, and most  
24    importantly people. Show a reasonable chance to  
25    make a decent living. If we give them a level

1 playing field, our young people will come back.

2 PHIL WEISER: If you can wind up.

3 LARRY SCHRODER: At present I believe  
4 we should look at 1031 tax exchanges. They  
5 encourage excessive investment that isn't needed  
6 many times. As a dairy farmer, I'm grateful for my  
7 cooperative, Dairy Farmers of America and our  
8 sister co-ops throughout the country that help to  
9 represent us and strengthen our position in the  
10 marketplace and public policy.

11 I wish, frankly, that a similar effort  
12 was viable -- viable for hog and beef enterprises,  
13 and I urge you to help defend and strengthen  
14 cooperatives. I believe that we need more public  
15 investment and research in seed, especially  
16 conventional varieties, and sustainable livestock  
17 in farming marketing systems. Thank you.

18 PHIL WEISER: Thank you.

19 ANGIE TAGTAL: Good afternoon. My  
20 name is Angie Tagtal, and I'm a registered  
21 dietitian here in Iowa working on public health and  
22 food access issues, and I want to remind us of some  
23 natural laws in this discussion.

24 Natural Law No. 1, food is a basic  
25 human need. We're talking about food. Law No. 2,

1 food is our source of health and well-being. And  
2 Law No. 3, those who control our food supply  
3 control society's, and even when Wendell Berry said  
4 that eating is an agricultural act, health is an  
5 agricultural act. Nourishing society begins with  
6 seed, soil, water, and sunlight.

7                   Diverse seed grows diverse crops.

8 Diverse crops cultivate diverse jobs resulting in  
9 economic vitality, especially in rural areas.  
10 Diverse crops puts diverse foods on our plates, and  
11 diverse foods are the key to not only healthy  
12 individuals but families, our farms, and  
13 communities.

14                   The vertical and horizontal  
15 consolidation and concentration within any sector  
16 of the food system has and will continue to limit  
17 our access to foods that promote health. Having  
18 diverse foods makes getting healthful foods easier  
19 choices. This thereby can make an impact not only  
20 on the health of eaters but especially children and  
21 future generations.

22                   Seventy years ago there were more than  
23 34 different crops that were grown in Iowa farms,  
24 half of which were fruits and vegetables. Today  
25 there are only ten crops that are grown on Iowa

1 farms, none of which are fruits and vegetables and  
2 many that are not even designed for human  
3 consumption. In fact, less than .1 percent of  
4 farmland in Iowa grows foods that promote health,  
5 primarily fruits and vegetables.

6 But a paradox exists today that  
7 30 million acres in Iowa are devoted to  
8 agriculture. Yet 12 percent of Iowans and even  
9 more Iowans today than a few years ago do not have  
10 regular access to food. As a result -- and it's  
11 estimated that about 80 percent of the foods that  
12 appear on Iowans' plates are actually brought into  
13 Iowa.

14 As a result of this corporate control  
15 of Iowa's food system, Iowa agriculture doesn't  
16 even feed Iowans. This is a national security  
17 issue. As eaters, we all should share  
18 responsibility and ownership of the food system as  
19 this would assure that all -- we all have regular  
20 access to safe, nutritious foods that not only  
21 support our health and well-being but for future  
22 generations as well. Thank you.

23 PHIL WEISER: Thank you. You know,  
24 we're a little past our ending time, and we're down  
25 to really hard core, but I want to ask a couple



1 more people if they're still here, I figure two  
2 more. 394 and 405. And then after that, we'll  
3 wind it up.

4 Reminding you all this is the  
5 beginning of a process. We're getting a lot of  
6 great ideas. We really appreciate you staying with  
7 us. Thank you, sir.

8 LARRY GITNER: My name is Larry  
9 Gitner. I'm a retired family farmer. I grew up in  
10 the '40s when agriculture was truly sustainable,  
11 not like today. Truly ethical, not like today.  
12 Mr. Brad Wilson was right. We need a further  
13 debate, and when we have the foxes guarding the  
14 chicken coop, we have big problems.

15 Secretary of Agriculture Vilsack  
16 carried water for the giant hog factories. Our  
17 lieutenant governor, Patty Judge, carried water for  
18 the vertical integrators. Governor Branstad who  
19 wants to be governor again carried water for the  
20 vertical integrators. Folks, we have a problem  
21 with ethics.

22 But I'd like to talk about a Catholic  
23 priest who once felt that breaking the Sixth  
24 Commandment, thou shalt not steal, if you could  
25 break that commandment and rob from your friends

1 and rob from other nations, you would probably  
2 break all the other commandments, and you would  
3 take your nation down into perdition.

4 We never talked about the ethics of  
5 our trait laws. We produce corn on the cheap.  
6 Family farmers aren't being paid ethically at the  
7 farm gate. Giant hog factories like Smithfield  
8 gobbled up that cheap grain and profit with 2 to  
9 \$3 billion since 1994 to 2001.

10 We send that cheap corn down into  
11 Mexico, and we drive millions of family farmers --  
12 we disrupt their marketplace and drive millions of  
13 family farmers off the land. That's ethical? But  
14 that's business as usual for Smithfield. And then  
15 they get cheap labor. That suits them fine.

16 And then the Department of Justice  
17 allows Smithfield to buy Premium Standard Farms.  
18 We have a problem. You ought to be ashamed of  
19 yourselves for allowing this to happen.

20 I got driven out of the hog business  
21 along with thousands and thousands of family  
22 farmers in the state of Iowa because of vertical  
23 integration.

24 Monsanto can now patent seeds that  
25 through eons of evolution? They didn't create the

1 seed. Nature did. Well, I'm going to shut my  
2 mouth now, but we better be damn sure what we're  
3 doing because what we're doing is wrong, mighty  
4 wrong.

5                   Smithfield is operating in Poland,  
6 drove 60 percent of those family farmers out of  
7 business. They're operating in Romania, drove  
8 80 percent of those family farmers out of business.  
9 They're operating in Brazil driving thousands of  
10 those family farmers out of business. And they're  
11 not a monopoly? Let's get real. I'll quit now.

12                   VERN TIGGES: I'm Vern Tigges. I'm a  
13 small farmer from Carroll, Iowa. I'm also  
14 president of Iowa Citizens for Community  
15 Improvement, a small advocacy group here in Iowa  
16 that seeks all avenues of social justice. And  
17 social justice is what it's all about.

18                   The corporations have gotten all  
19 facets of our economy governed, including our  
20 politics. And they do this -- they are in control  
21 of our economy. They control our politics because  
22 they can. And all laws and all policies are  
23 created by man and those who can influence them,  
24 and that is the problem where we stand today.

25                   We don't have social justice. We have

1 policies and laws that are created by man and the  
2 corporations and the people that can influence  
3 those people. So it's not a fair world as it  
4 stands right now, and that's why we are in this  
5 dilemma now. It's not only ag. It is all facets  
6 of our economy, including banking, all the  
7 financial sectors.

8               Last night I was at a workshop, and I  
9 asked -- and I don't know if I can do it here. I  
10 asked all those who have raised livestock prior to  
11 1995, please stand up. Prior to 1995, all those  
12 who raised livestock. Okay. Stay standing. All  
13 those who had ag-related jobs in any -- any sector  
14 of agriculture before 1995, please stand up. Okay.  
15 Out of all these people -- and I'm sure there's  
16 many people that left. Out of all these people,  
17 who have lost their job or have gotten out of  
18 livestock production since 1995, please sit down.  
19 That doesn't leave very many standing, does it?  
20 The proportion was a lot larger last night. Last  
21 night half of the people stood up, and when I was  
22 finished, there were three people standing.

23               So you see, it is the corporate  
24 structure that took over the agriculture in the  
25 last 15 years that put these people out of

1 business, caused people to lose their jobs.

2 And it is for that reason I'm not  
3 calling on -- I'm calling on you to go ahead with  
4 this antitrust procedure because all of us eat, and  
5 all of us have to have a job, and we all have to  
6 provide for our families. So I'm asking those all  
7 in favor of going ahead with this procedure of  
8 antitrust, please stand up.

9 PHIL WEISER: Thank you. I appreciate  
10 that. We have one last person we have called and  
11 want to give a chance to speak and then give people  
12 a chance to go home. Thank you for staying with  
13 us. Yes, sir.

14 UNIDENTIFIED MALE: I actually do have  
15 a number.

16 PHIL WEISER: No. I know. You as  
17 well were called?

18 RANDY JASPER: Yeah.

19 PHIL WEISER: That's fine. Two more  
20 people. Then --

21 UNIDENTIFIED MALE: Thank you for this  
22 opportunity and your patience. Just a little  
23 different twist on some of this. I'm a farmer from  
24 Harlan, Iowa. I have a written statement.

25 Larger factors and violations of

1 antitrust laws play into the seed industry's  
2 assertion that biotech seeds are in the best  
3 interest of feeding the world now and in the  
4 future.

5 I believe that accusations that  
6 organic and conventional crop breeding cannot do so  
7 are scientifically flawed. It ignores the  
8 scientific data for many long-term agronomic  
9 studies from both private institutions such as the  
10 Rodale Research Institute and from public land  
11 grant institutions such as Iowa State.

12 These studies show that natural  
13 cropping systems can produce similar yields while  
14 reducing fertilizer and pesticide usage, decreased  
15 energy usage. Decreased CO2 emissions are done  
16 with cheaper production costs and greater economic  
17 efficiencies.

18 Then at the same time, this bias from  
19 these companies insists that its ability to feed  
20 the world's hungry in the future can only be  
21 accomplished by the commodity large scale export  
22 model that removes farmers from their lands and  
23 communities all over the world.

24 I recently spent 11 days with my son  
25 who's an agricultural worker in the Peace Corps in

1 Honduras, and I saw firsthand that these people  
2 need access to markets and help in green farming  
3 practices. And I was appalled to learn from my son  
4 that four out of five supermarkets in this country  
5 of seven million in Honduras are controlled by  
6 Walmart.

7 I've been an on-farm researcher, and  
8 I'm a biologist and a farmer. I've been an on-farm  
9 researcher for 23 years now in cooperation with  
10 Practical Farmers of Iowa and Iowa State  
11 University. I've been an organic farmer for  
12 27 years and a certified one for 16 years. I can  
13 now grow 200 bushel corn and 65 bushel beans on a  
14 consistent basis. I couldn't do it after the first  
15 10 years, but now after 27 years, I can do it.

16 I can do it because of being a  
17 diversified crop and livestock farmer in the best  
18 history and tradition of our state and our Midwest.  
19 And now I'm doing it with less expensive  
20 conventional nonbiotech seeds. We are now reaping  
21 the benefits of soil-building crop rotations,  
22 animal manure and compost for soil and plant  
23 health, and we are producing a more nutrient-dense  
24 food for better human nutrition.

25 The takeover of small plant breeding

1 companies by just three or four companies has  
2 diminished our seed genetic diversity and has  
3 greatly eroded our public institution's ability and  
4 responsibility for creating new seeds that serve  
5 the public good. Thank you.

6 PHIL WEISER: Thank you.

7 RANDY JASPER: My name is Randy  
8 Jasper. My son and I operate a dairy and grain  
9 farm in southern Wisconsin, and you were  
10 wondering -- I'll keep this short, by the way. One  
11 of the things you was talking about what you can  
12 do, the DOJ right now has an investigation against  
13 Dairy Farmers of America for price fixing. That  
14 would be one thing you could do, is proceed on that  
15 one.

16 Also, we're looking forward to the  
17 dairy -- I'm about 60 miles from Madison. We're  
18 looking forward to the hearing there. Thank you.

19 PHIL WEISER: Thank you. A few  
20 closing remarks. There is a lot of road ahead.  
21 We've got our work cut out for us, whether the  
22 metaphor is the cow is out of the barn, down the  
23 street, on the rail, whatever, we're going to try  
24 to do our best to find it, and we are going to look  
25 at this issue from a number of perspectives, and



1     this is the first of five workshops working  
2     together with USDA. This is unprecedented, and  
3     this is the sort of engagement that I think makes  
4     good government.

5                 Having a chance to hear from farmers,  
6     the academics who spoke for us today, many from the  
7     local area, businesses, and other experts as well  
8     as enforcers is going to help us learn more about  
9     this industry and be more effective. It's all  
10    going to be part of this record as will further  
11    comments that keep on coming. We really hope folks  
12    who have commentated continue to engage, look at  
13    the transcript, share reflections, share with us  
14    your ideas.

15                We're going to release the proceedings  
16    from today, putting it on the website as well. The  
17    video forum will be available, and we want to make  
18    sure that this can lay the groundwork for further  
19    discussions.

20                Our next workshop is going to be in  
21    Normal, Alabama, on May 21 addressing the poultry  
22    industry. As someone just mentioned, it will then  
23    be June in Madison.

24                We are so appreciative to have all the  
25    officials join us today, many of the elected

1 officials here from Iowa as well as our attorney  
2 general, secretary of agriculture. A number of  
3 state attorneys general joined us. This shows you  
4 the level of commitment of a lot of folks who are  
5 getting their arms around these issues.

6 It's also worth noting that an event  
7 like this doesn't happen without a lot of people  
8 working very hard. John, do you have a chance to  
9 maybe acknowledge some of those people?

10 JOHN FERRELL: Yes. I would like to  
11 thank everyone at the FFA Enrichment Center and the  
12 Des Moines Area Community College that have spent  
13 many hours helping prepare for this successful  
14 event today. I would like to thank Robert Denson  
15 who's president of DMACC for allowing us to use  
16 this facility here today. I don't think when we  
17 called him back several months ago he knew what he  
18 was getting into, but we thank him for helping us  
19 today.

20 Finally, we would thank you. We thank  
21 everyone who came here today, for participating in  
22 this event, by providing written comments in  
23 advance, by providing public comments today, or by  
24 simply just attending the event and engaging in  
25 conversations with us in hallways and during

1 breaks.

2 We have benefited from the variety of  
3 experience and opinions that you all have brought  
4 to this workshop. We also thank the numerous  
5 panelists who have made themselves available, who  
6 have taken the time to travel here today, and  
7 they're providing extensive involvement. And  
8 again, we thank you for all attending. Thank you.

9 PHIL WEISER: Have a nice weekend.  
10 Thank you.

11 (Hearing concluded at 5:50 p.m.)

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## C E R T I F I C A T E

I, SueAnn Jones, Certified Shorthand Reporter and Notary Public in and for the State of Iowa, do hereby certify that the foregoing is a true and accurate computer-aided transcription of the hearing as taken stenographically by and before me at the time and place indicated on the title page;

That I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am not financially interested in the action.

Dated this 16th day of March, 2010.

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SUEANN JONES, CSR, RPR